

1
A SOLEMN and PUBLIC

A P P E A L

TO

England. Laws & Statutes. [11]
~~John~~ Magna Carta [12] [13]

M A G N A C H A R T A,

AND THE

COMMON LAW of ENGLAND,

UPON THE

SUBJECT OF INHERITANCE

TO THE

LANDS of INTESTATES by DESCENT,

AND ALSO

RELATIVE to a GENUINE CASE annexed.

Humbly Inscribed to the Right Honourable and Honourable the
JUDGES of ENGLAND.

By a GENTLEMAN of the MIDDLE TEMPLE.

Nullum Iniquum, in Jure præsumendum. 1. Inst. Lib. 3.

L O N D O N :

Printed for J. BROTHERTON, at the BIBLE, in CORNHILL.

MDCCLXVI.

A SYSTEM OF PUBLIC
 A B P E A L
 TO
 MAGNA CHARTA
 AND THE
 COMMON LAW OF ENGLAND
 FROM THE
 SUBJECT OF INHERITANCE
 TO THE
 LANDS OF THE STATES & DESCENDANTS

AND ALSO
 EXPLANATIONS OF THE
 HISTORY OF THE
 JUDGES OF THE

BY A GENTLEMAN OF THE
 NATION IN THE
 1791



L O N D O N
 Printed for J. BROTHROCK, at the Office of the

P R E F A C E.

TO prevent a Purchaser of any Work published being disappointed by a Title Page, it is but reasonable the Contents thereof be partly shewn through a Prefatory Address; in order to which the Editor of the following Treatise informs his Readers, that the chief Argument thereof is levelled against a certain Mode, invented by Lord Chief Justice *Coke* (for neither *Littleton*, nor any of his other Predecessors, call it Common Law) in the Reigns of Queen *Elizabeth* and King *James* the First; to direct the Succession of Freehold Lands by Descent, which he most ingeniously says ought to be governed by the Laws of Gravitation; and sets forth so many other pretty Devices for the Puzzling of plain Truth and natural Justice, as hath justly made his Maxims respectable amongst those who prefer Profit to Honesty, but detestable to all others; yet this Position, modern Compilers have implicitly adopted, and given the false Appellation of a Law Canon to, investing all the real Estates of Intestates in Primogeniture solely, to the Exclusion of every other Child; perhaps

Blackwood.

on a like courtly Plea, made some Time before the Restoration, "That we are all Slaves by Reason of
 " the Conquest, universal Disgrace and Ridicule are
 " brought upon our national Jurisprudence throughout
 " *Europe*, that so glaring a Solecism and Barbarism was
 " not sooner discovered and exploded with us, who boast
 " a constitutional Liberty, impartially deduced from
 " Theocracy itself."—To bring so notorious an Imposture
 (as this pretended Canon of Inheritance truly is) before
 our Tribunal of public Justice, (renowned for good
 Faith and unexampled Integrity in foreign Engage-
 ments) in case younger Sons of Family are so remiss as
 to neglect assisting therein, and obtaining a Reparation of
 their Honour, let them continue in the Infamy they de-
 serve) for Expostulation or Arguments (though from the
 highest Civil Authorities) shewing the Iniquity, atrocious
 Design, and Machiavelian Policy, couched under so
 black a Mask, will little avail with those * whose Cha-
 racteristic is, the accumulating Wealth (*per Fas aut*
Nefas) and who in whole Parties go through thick and
 thin (as the *Latin* Distich says) to obtain it. Where-
 fore he has chosen the plain and obvious Method of set-
 ting up, in the Face of the whole World, *Magna Charta*,
 and all the subsequent Statutes, together with such emi-
 nent Authorities of Law Writers through every Reign,
 from *William* the First, *Anno* 1065, to this present
 Year 1766, as cannot fail to convince every Degree of
 Magistracy,

* Nam nullus
 dives nisi
 Nummularii
 cum Scaccar.
 Reg.

Magistracy, and People, of the sacred Injunction now lying upon their Consciences, to restore that Birthright (to Posterity at least) which the sole Operation of one Man's Opinion * has defrauded Thousands of innocent Orphans (his Majesty's most dutiful and liege Subjects) of, *viz.* that invariable Right which was established for every Native of these Realms, by the most solemn *Pacta Conventa* (under a Sacramental Test of King, Lords, and Commons, in Behalf of themselves, their Heirs and Successors for ever) that ever appeared in any Nation, either before or since. *Magna Charta* is declared to be the Law of the Land; it gives full Power to every Freeholder, to dispose of his Lands at his Pleasure; but on Default thereof (through Intestature) distributive Justice makes no Distinction of Children, Age or Sex, all being equal Inheritors, in common and free Soccage Lands, which by the *Stat. 12 Car. II. Cap. 24.* all Lands, Manors, &c. are now to be adjudged and construed.— A Testator may give all to one Son, in order to make a Family, *quasi* in spite of him, by whom Kings reign *; but without such a Will, or other Disposition of him, the Lands become the Property of all his Children, who according to the Rights, Liberties, and Franchises of Free-born *English* Subjects, must succeed as Parceners in their common Patrimonial Inheritance: Suppose the Dogma of a *Coke*, or other Preferment-seeking Lawyer, should

* As Anno
1553 said
Pope Julius
III. *Al De-
spitto di Dio.*

* *Coke*, whom Sir Matthew Hale charges with both Error and Corruption. *Ventris's Reports, Atkyns, v. Clace in Scacc. Reg. 25 Edw. I.*

be quoted in Favour of suspending the *Habeas Corpus* Act, the Act of Toleration, or any other Right of the Subject (which hath been done heretofore) has not the Wisdom of Parliament retrieved the same when the Courts of Law were shut against Redress?—A Parallel Case now before us exhibits a Scene of Oppression (upon no better Plea) which the Annals of no other Country can produce. This, we have Authority to say, was intended last Sessions to be laid before Parliament, but postponed, and only presented to several worthy Members of both Houses for their Inspection; since which it has received the Sanction and Approbation of a most respectable and numerous friendly Society * among us; whose Integrity, Wisdom, Loyalty, and true political and moral Principles, no one can doubt of.

THESE Gentlemen have unanimously given their Verdict after mature Deliberation (in full Annual Assembly met) not only in Favour of the Probity and Justice of the Plea, but also accompanied it with their sincere Wishes for the Success of the Undertaking, towards restoring a Family *Lex Agraria*, which would prevent Monopoly of Lands, and encourage good Husbandry, and provide Plenty for the Poor by Agriculture.

To obviate an Objection which hath been raised, that if a Retrospect was had, it might affect the Titles to

* A Society, which for 120 Years past has not been tainted with either a Rebel, a Felon, or a Beggar.

half of the Landed Estates in the Kingdom, it need only be replied, that nothing can impeach the Title of a fair Purchaser of any Denomination, whether he be a Buyer, a Mortgagee, a Tenant by Entail or Marriage Settlement; for a Retrospect will only reach the Disseisor in Possession, against whom every honest Man will say, *Curat Lex, Valeat, quantum ipsi Valere potest.*

As for the Pleadings on the Case, they are the best Efforts of a Member of the Community, to bring the Subject-matter to an Issue; he choosing to disculpate his own Soul from that dreadful Imprecation and Injunction laid upon all by our Ancient Legislature, to preserve the Contents of *Magna Charta* inviolable to the latest Posterity, expressly declaring the Motive and Design of it was, “for the Health of the Souls of Kings, “Lords, and Commons, their Heirs and Successors for “ever, to see that equal Justice be done to all Men.” This sacred Compact is not in the least Part diminished either in its Force, Meaning, or Intention to this Hour; being solemnly renewed and confirmed at every Coronation by the same Oaths and Sacramental Test.

Mag. Chart.

Ibid.

IF notwithstanding all this, no Regard be had to the future Protection of the Free-born, but miserable Orphan, whose native and undoubted Rights have been so impiously invaded (as is submitted to every impartial Mind to decide) he can do no more *in propria Persona*. But
in

*Mag. Char.**Nullo Crimine
Infideli.
Tract upon
Feudal Te-
nures.*

in consequence, a strong public Protest and Manifesto (addressed throughout *Europe* with *Magna Charta* annexed) in Defence of our Constitution against this exploded and absurd Canon of Lord *Coke* aforesaid, probably may ensue. By Virtue, Force, and Sanction of which Counter-part of our Allegiance, an exemplary Satisfaction will be demanded (in Behalf of Thousands born under our excellent Laws) as all and every Rank of Men among us shall answer the contrary before that Tribunal, whereunto the injured Orphan (now disinherited, without any just Cause shewn) shall one Day summon, and meet his deceitful perjured Guardian, and unjust Oppressor, Face to Face.

THE candid and humane Reader is intreated also to overlook any Inaccuracy or trite Reflections which may escape from an Author, whom he has Reason to believe is a very considerable Sufferer by that very Mode which is here attacked; and if some Allowance for Complaint (as generally is) be given on that Head, it will confer a lasting Obligation on

Their most obliged

and most obedient

humble Servant,

The EDITOR.



INTRODUCTION.

Nullius addictus jurare in Verba Magistri. HOR.

WITHOUT doing Violence to the Meaning of the Poet, we may render the above Motto, "Take not the Words of others for your Faith:" And we have in Charge from one, superior to any Poet, even to scrutinize the Scriptures. This Liberty, thanks to our happy Constitution, we of this Kingdom may do with Impunity. It is the Privilege granted by our most gracious Master to all Mankind, that we might, by the Light of Reason, be guided into the Way of Truth; and nothing surely can obstruct this desired End so much as an implicit Resignation of our Understanding to the vague, dogmatical Doctrines of any Man, or Set of Men.

IT is not above two Centuries since, that Popish Superstitions were deemed infallible, and the denying Obedience to the *Vatican* Bulls held equally impious with Blasphemy, until, by the Virtue and Magnanimity of a poor Priest, who first appealed to a General Council, the Reformation began, which, at Length, re-established the true, primitive, apostolical Constitution. By recurring to our *Magna Charta*, the Bible, we have freed ourselves from the Yoke of Papal Tyranny, which had deprived us of our Heavenly *Canaan*.

If then we have succeeded in ascertaining our spiritual Privileges, why should we stop short, we, who are free to assert Truth in every Branch of Literature? Why should we suffer the Offspring

Feodal Rule
in Military
Tenure, now
abolished.

[ii]

of Ignorance, Usurpation, and Absurdity, which is handed down to us from a despotic Military Dispensation, to be supported, and permitted to bear a Name, the most opposite to its Nature, and which has long been the greatest Disgrace to the Common Law of *England*? Why should we take the *ipse Dixit*, the precise Judgments, dogmatical Decisions of those who may, and have been wicked enough to strain, to *warp*, to pervert the Laws they ought to have preserved sacred from Violation; for by these exists our Liberty, and must with these expire!

LET us therefore suspend our assent to every human System, until, from a thorough Examination, we find that the Principles of the Doctrines are consonant to each other, and will bear the Test of the severest Inquisition: By neglecting this most necessary Duty, our so much boasted Laws may be explained away, and partial, temporary, absurd Comments usurp their Place, and be administered as the Laws themselves.

UNDER the most excellent Regal Administration, that ever adorned the *English* Throne, are, perhaps, near two Thirds of his Majesty's liege Subjects, at this Time, disinherited, and rendered incapable, both in themselves and their Posterities, of ever being deemed immediate or direct Heirs to either Father or Mother, by the pretended Canon of Inheritance laid down by the Compilers of our Law-Tracts, which obtrudes such a Mode of Succession to the Lands of our Country, as is not to be met with in any other civilized State in the known World; a Mode, the most unnatural that can be conceived, which excludes Children, equally legitimate with their eldest Brother, from inheriting a single Acre of their paternal Lands.

THE Subject-Matter therefore of the following Sheets will be a free Disquisition of that great Solecism in our national Jurisprudence; a Grievance of so very extraordinary a Tendency, both in its past and present Effects, as will be looked upon by every cool and impartial

impartial Lover of his Country, well worthy the Consideration of all who have the Honour, Welfare, and Safety of this powerful Kingdom at Heart.

A just Distribution of the Possessions of our Ancestors hath ever been regarded as the first Fruits of natural Liberty, and of so ancient an Original, that it is promised in the Decalogue as the immediate Reward of Duty to our Parents: "That thy Days
" may be long in the Land which the Lord thy God hath given
" thee."— And in another Place, *Terram autem dedit Filiis
Hominum*, " But the Lands he gave to the Sons of Men."——
These as general Premises.—In Process of Time, when Men began to form Communities, it was found necessary to confine a distinct Property to those who acquired Lands either by Conquest or Purchase; by Virtue and Force of which they descended to the Heirs of such first Purchaser, according to his Will or Pleasure: But in Case of Intestature, without any Disposition of him, then the Common Law of every free State, that is, the Divine Emanation of natural Justice on the Minds of Men, allotted the same to the Maintenance of the immediate Descendants in the whole Blood, and, on Default thereof, then to Collaterals or Relations. When this Method became afterwards reduced to written Laws, they (as being universally approved) were termed Civil Laws; in which the former Heirs were called *Consanguinei*, or whole Blood; and the latter, *Cognati & Agnati*, only Relatives to the Main-Stock. The Justice, Propriety, good Policy, and Wisdom of this Disposition of Patrimony, was never impeached in any Age or Nation, nor ever laid aside (as repugnant to fundamental Policy) however over-ruled it may be by arbitrary Sway in some Countries, or, as it also hath been here, basely perverted, through some temporizing Opinions of certain Lawyers who have appeared from Time to Time among us. It may however be urged in Alleviation of

Exod. xx.

Pref. to Stat.
at Large by
Ruffhead.

*Causa sublatâ,
Effectus tollitur.*

this Charge, that the Laws in those Times were very defective in regard to Civil Proceedings; whereby Courts of Judicature were often left open to Temptations, and exposed to Menaces, and, in the Decline of Feudal Policy, were easily corrupted, or over-awed by the Influence of the Crown, or of some powerful Baron: But these Causes now ceasing, the Adjunct drops of course; consequently no Commentaries or dogmatical Decisions of Despotism ought to be adopted, inconsistent with our present happy Establishment.

If Compilers have copied implicitly an arbitrary Military Canon, which pretends to invest the landed Inheritance of Intestates in Primogeniture solely, to the Exclusion and Destruction of the whole remaining Part of an Orphan Family, yet we shall not find such a Law or Title so much as named (much less enacted) by any explicit Act of the Legislature, during a Course of 700 Years past; that is, from the *Norman Invasion, Anno 1065*, to this present Year, 1765. And could even the usual Sophistry of Pleaders (wresting their Implications from the Words of a Statute, to cover a Fraud) be admitted here, to enforce such a notorious Breach of our Constitution, as disinheriting all younger Sons, yet the Fact will find no Sanction, while this Nation professes the utmost Regard and Attention to supporting the natural Rights and just Liberties of every Individual among us.

3. Gal. & Mar.

As the indigent, and consequently friendless Orphans have been long oppressed with Impunity, so now their Destroyers plead Prescription for their Actions, and call this atrocious Robbery of Free Citizens, a Law by the Custom: But they must first prove a Custom just, voluntary, free, reasonable, and constitutional, ere it will bear the Stamp of Legality fixed upon it. The Act of *William and Mary*, declaring the Liberty of the Subject, says that "no Power can dispense with the
" Laws

"Laws, without Consent of Parliament; and to alter the Execution thereof, is illegal." Yet this Mode usurps an Authority, which supercedes not only the whole Tenour of *Magna Charta*, but oppugns all the most approved Constitutions of every State in *Europe*.

THE Expectation of the Public (whose Attention has been sollicitated by several Publications lately) for a Parliamentary Explanation of the Laws of Inheritance to Lands of Intestates, agreeable to our Constitution, may not be very strong; that such a Motion will meet the least Notice, in our Days, (notwithstanding accompanied with the good Wishes and Approbation of every conscientious Parent, Guardian, and Lover of his Country) through a Supposition of its being an intricate and difficult Subject to discuss: But to convince them of the contrary is the Intention of the present Essay, wherein will be exhibited a Deduction of the Title under which every *English-born* Subject still claims Protection, for the Security of his Property, and his Life also.

THE Method therefore proposed, is to commence at the Fountain-Head, from whence each Liberty enjoyed by us at this Day is drawn; namely, the *English-Saxon* Laws under *Alfred* and *Edward Confessor*; thence proceeding to the Invasion of *William Duke of Normandy*, by a short Historical Progression, endeavour to trace the Origin, Practice and Effects of Feudal Tenures, the several Alterations therein, and Franchises granted by all his Successors, in *Magna Charta*: Then will be found the regular Gradations by which our present happy Constitution was restored to us, and after many bloody Conflicts (in the Struggles made

*Anglo Saxon
Laws.*

made by our Ancestors) at length fully confirmed to our Posterity for ever, by the most solemn Act of the whole Legislative Body of this Realm, who publickly, and by every sacred Tie, entering into a *Pacta Conventa* or Covenant with each other, in behalf of themselves, their Heirs and Successors, for ever engaged to preserve the said Liberties and Free Customs inviolable to us and our Posterity. This was performed and executed before as numerous an Assembly of the People as ever appeared in *Westminster-Hall*, under the strongest Invocation of the Deity, deepest Imprecations of his Judgments on the Contraveners, and pathetic Adjuration to all Men, joined by a Sacramental Test, in order to enforce the due Performance of it, to and by their latest Posterity.

It may seem Matter of Astonishment to observe, that a Nation like this, whose Constitutional Essence professes the utmost Attention and Regard for securing the natural and just Rights of every Individual among us, should still suffer that most important Object of all Human Views and Attainments, namely, the undoubted Birthright of every *English*-born Subject to a just Share in his Paternal Lands, to be in the least Degree, not only impeached, but, much more, totally cut off, both from themselves and Heirs for ever, in Cases of Intestature. Among all intelligent foreign Writers it has been, and still continues to be, Matter of the utmost Ridicule, in return for our vain Boastings of Liberty, and of the greatest Contempt of our National Jurisprudence, to find a Mode adopted as Law, which utterly annihilates both. We shall, however, undertake to prove, by a plain, easy and concise Deduction of the first Principles, whereon the present Common Law of *England* is grounded, and upon which the most approved Maxims thereof are now enforced by Statutes, (see

the Practitioners and Abettors of *Norman* Military Usurpations alledge what they please in their Vindication) that no such Title subsists, or is authorized by it; but that the Disgrace now lying so heavy on us, for so great an Absurdity, ought totally to be charged upon the Inattention (to say no worse) of our antient Law-Compilers, and of those who have implicitly taken the mere personal Dogma of a *Coke* to pass as the fundamental Law of the Land, although it oppugns the following known Rules of it. For doth not our Law abhor Intails in general, and partial Successions? Hath it not provided a Remedy, by docking them in the third Descent when made? Hath it not, by a fair Purchase from the Crown, set all Lands free, and ordered them to be adjudged and construed as turned into Free and Common Soccage Tenures? And do not such Free Soccage Tenures ordain the very same Mode of Succession which was by the most sacred Compact (still in full Force) delivered down, as the original Free Liberties and Customs enjoyed by the *English-Saxon* Laws prior to the Conquest, according to the express Words of *Magna Charta*?

Stat. of Fines.

12 Car. II. cap.
24.*Magna Charta.*

We shall then beg Permission here to give a few introductory Illustrations for the Establishment of this general Argument; which cannot be done more conclusively, than by quoting such Authorities upon the Subject of Paternal Descents, as have never been controverted, and whose Abilities, Integrity, Disinterestedness, and Virtue, shine with the greatest Lustre in the Cabinets and Councils of the greatest Potentates in *Europe*, at this Day. "Natural Law and Rights," says the great *Hugo Grotius*, (*Jura Naturalia, quoddam Divinâ Providentiâ constituta, semper firma et immutabilia permanere*) "are appointed by Divine Providence ever to remain fixed and unchangeable: " *Hus autem tale quod nec Rex Subditis negare debet, nec Christianus non Christianis*; " a
" Right

“ Right which no Sovereign ought to deny his Subjects, nor one
 “ Christian to attempt to deprive another of.”

*Instit. Jus. §. 11.
 Noville 115.
 Cap. 3. §. 1.*

THE Decrees of *Theodosius* and *Justinian* run in these Words:
*Sancimus non licere Patri vel Matri, Filios præterire, aut Exhæredes
 in suo Testamento facere, nisi forsân probabuntur ingrati:* “ We
 “ direct and enact, that it shall not be lawful for either Father
 “ or Mother to set aside, or disinherit, their Sons by their last Will
 “ and Testament, unless they should perhaps be convicted of
 “ Disobedience.” *Sed eis dederit Legibus Portionem debitam:*
 “ But shall give them the full Portion, which is due to them by
 “ the Laws.” *Nam prima Causa in Successione, ab Intestato, est
 Liberorum:* “ For the first Cause to be considered, in the Succession
 to an Intestate, is that of the Children. *In hæc Leges, non plus
 Regibus licere quam Plebi, adversus Decreta Decurionum, Decurionibus
 contra Præsidum Edicta, Præsidibus in Regum ipsorum Sanctiones:*
 “ These Laws and Constitutions equally regard both King and
 “ People, being a Check against the Decrees of Senates, for the
 “ Senates against the Judgments of Courts, and in behalf of Courts
 “ against the Rescripts or Sanctions of even Kings themselves.”
 How different is the impolitic and unjust Mode of the
 great Oracle in the Law! (Sir *E. Coke*, a Man whom Sir *M. Hale*
 charges with both Error and Corruption--See *Ventri's Reports*.) His
 Rule of disinheriting two Thirds of his Majesty's Subjects from
 their Cradles, is worse than the *Athenian* Law-giver *Draco's*; the
 latter indeed levelled against the Guilty; but the former proscribes
 the innocent new-born Babe, most helpless and distressed Orphan.
 In the Prosecution of the Subject, we shall not trouble our
 Readers with a long, or a perplexed Dissertation upon Precedents
 of Courts, nor the Opinions of such Men who have taken as
 Law, (*pro Confesso*) an absurd, ignorant, and (juridically considered)
 a most cruel, dangerous, and destructive Measure; but, by
 producing our real Constitutional Laws, make a most solemn
 and

*IIIrd Canon of
 Inherit.
 Anal. Leg. Angl.*

*Saucer. 22, & 23,
 Will. Car. II.
 Case Atkins v.
 Clare.*

public Appeal to them, in order that the Injured may demand, in a summary Way, that exemplary Justice and Satisfaction, which is denied (by this adopted Canon) in the ordinary Course of Law-Process.

Of this, many of our most respectable Personages in the Law were thoroughly sensible, as their Works will testify. At length a very worthy Patriot, the late *Thomas Viner, Esq;* devoted his Fortune by his last Will and Testament, towards erecting a Professorship at the University of *Oxford*; whose noble Intention cannot be better manifested, than in the Words of that learned, candid, and honourable Gentleman, who, by a unanimous and free Suffrage, was deservedly elected thereto by the said University: "The Study," says he, "which is now first adopted by Public Academical Authority, has been reputed (however unjustly) of a dry and unfruitful Nature, and of which the Theoretical Elementary Parts have hitherto received a very moderate Share of Cultivation: A Species of Knowledge in which the Gentlemen of *England* have been more remarkably deficient than those of all *Europe* besides: And it has been the peculiar Lot of our admirable System of Laws, to be neglected, and even unknown, by all but one practical Profession, though built upon the soundest Foundation, and approved by the Experience of Ages. On the Continent, no Gentleman, or at least no Scholar, thinks his Education completed till he has attended a Course or two of Lectures, both upon the Institutes of *Justinian*, and the local Constitutions of his native Soil, under the very eminent Professors who abound in their several Universities: However, a general Acquaintance with the Imperial Laws, even in *England*, has not been totally neglected; but a competent Knowledge of their Decisions has always been deservedly considered as no small Accomplishment of a Gentleman, inasmuch, that of late a Fashion has prevailed, to transport the growing Hopes of

C

" this

*Ch. J. Robinson.
Judge Doddridge.
Keate.
Hutcheson.*

*Vinerian
Professor of
Common Law at
Oxford.*

*Blackstone
Discourse on the
Study of the
Law, fol. 16, &
seq.*

" Island to foreign Universities, in *Switzerland, Germany, and*
 " *Holland*, though infinitely inferior to our own. Yet far be it
 " from me to derogate from the Study of the Civil Law, considered
 " (apart from any binding Authority) as a Collection of written
 " Reason. No Man is more thoroughly persuaded of the general
 " Excellence of its Rules and usual Equity of its Decisions; nor
 " is better convinced of its Use, as well as Ornament, to the
 " Scholar, the Divine, the Statesman, and even the common
 " Lawyer. But we must not carry our Veneration so far, as to
 " sacrifice our *Alfred* and our *Edward* to the *Manes* of *Theodosius*
 " and *Justinian*: We must not prefer the Edict of the Prætor, or
 " the Rescript of the *Roman* Emperor, to our own immemorial
 " Customs, or the Sanctions of an *English* Parliament; unless
 " we can also prefer Despotic Monarchies (for whose Meridians
 " the former were calculated) to the Free Constitution of *Britain*,
 " which the latter are adapted to perpetuate."

Magna Charta.

Under the general Plan of Instructions given by this valuable
 Institution, the present Writer has entirely regulated an earnest
 Application to the Study and Profession of the Law, for some
 Years past, at a Time too when his Patience and Industry were
 almost tired out, by meeting (in the voluminous Tracts thereon)
 such a continued Scene of Inconsistencies, quaint and absurd
 Evasions, Time-serving Statutes, and arbitrary Judgments thereupon,
 particularly of former Times, as might reasonably cause so incon-
 clusive and dry a Branch of Literature to appear incapable of
 ever discovering the true Grounds and Principles of Practice in
 the Common Law. But the clear, perspicuous, and compre-
 hensive Method, wherewith it is now analyzed and set forth, gave
 such Encouragement to a more minute and thorough Investigation
 of it from its Source, as hath enabled, or rather emboldened the
 Author to attempt laying before the Tribunal of the Public as

Blackstone,
1762.

to acquire growing and 4 modum of believing and notions great

great an Oppression, in the Execution of that Part of the Common Law of *England*, which regards Inheritances to Lands, as ever disgraced a regular Community, and, if longer adopted, will reduce us below the Level of the meanest State in the known World; whether we respect National Jurisprudence, sound Policy, or Wisdom:—It is however certain, that our Ancestors, as well as several of the most respectable Authorities in the Law, (hereafter quoted) have left behind them sufficient Records of their Disapprobation of granting any exclusive Right, or Privilege, to Primogeniture; much less to render their helpless Brethren as incapable of Inheriting any Part of their Patrimonial Lands, as if Illegitimate or Outlaws. What private Dogma then dare sanctify a Mode which discharges two Third Parts of his Majesty's Subjects from the surest Bond of their Fidelity, by robbing them of Inheritance in their Native Soil? Or what is a Country to him, who is thus proscribed at his Birth, without a Crime even so much as alledged? Yet younger Sons (*nullo Crimine infecti*) suffer a total Forfeiture and Confiscation of it. An illegal and pretended Canon has prohibited their Succession as Heir to either Father, Mother, Brothers, Sisters, Uncles, Aunts, or any of their Offspring, either while a Child, Male or Female, Grand-Child, or Great Grand-Child, of the Elder Brother be living. The latest Authority (the above-mentioned learned *Vinerian* Professor at *Oxford*, in his *Analysis*) declares himself clearly against such a flagrant Breach of Natural Rights in general, as well as of our Constitution in particular. "The *Greeks*, the *Romans*, the *Britons*, the *Saxons*, and even "originally the Feudists themselves, divided the Lands equally; "some among all the Children at large, some among the Males "only. This (he farther adds) is certainly the most obvious and "natural Way." And thus *Calvin*; that Brethren of the whole Blood of the same Parents, form the first Rule and Canon of Descent, as being *Consanguinei*; *id est*, *Vinculum Personarum ab eodem Stipite descendunt*, "and one Heir by Descent, a Chain of "Persons descending from the same Stem, or Root."

*Doddridge,
Robinson,
Hutcheson,
Hume, and
others.*

*Blackston's
Descents, fol.
191.*

*Lex. Fr. 38. 16.
1 & 2.*



A N
A P P E A L
T O
MAGNA CHARTA, &c.

————— *Vir bonus est quis ?*
Qui Consulta Patrum, qui Leges, Juraque servat.

HORAT. Ep. I.

 T is agreed by all our Historians, that the Laws of *Edward the Confessor*, (so called) were collected from those of the *Mercians, West-Saxons, and Northumbrians*, as also of *Alfred, Edward the Elder and Edgar*, reduced into one Body, and written in *Latin*, of which we have still some Remains; so that when we hereafter find them referred to, as his Laws, (so universally applauded and approved of) we ought to consider, it is meant, that ancient *English-Saxon* Law, which is in a great Degree the Fountain-Head of what should, at this Day, be practised as the Common Law of the Land.

Saxon-Laws.

THESE Laws, after the *Norman* Conquest, were often invaded by the Crown, and as often asserted and struggled for by the People, causing many bloody Conflicts, for near 250 Years,
until

until, after several Renewals of *Magna Charta*, they became finally confirmed in the Reign of *Edward the First*, Anno 1300.

IN order to illustrate this Matter fully, and to give a clear, distinct, and particular Detail of the Progreſſion, various Struggles for, and final Re-eſta bliſhment of, our preſent happy Conſtitution, I purpoſe to follow it through every Reign during that Period, with Publications of *Magna Charta*, placed in one Column, and an *Engliſh* literal Tranſlation thereof, in the oppoſite one; and taking the ſame Method with the *Saxon* and *Norman* Tongues, (where they may occur) ſubmit it to the Peruſal of the candid and critical Reader, that, in caſe of Error or Miſconſtruction, ſuch may be diſcovered and amended.

Anno 1065.

Edward, fol. 125.
cap. 6.

IN the Year 1065, “ Upon the Decease of *Edward* aforeſaid, “ the Royal Line of the *West-Saxon Engliſh* Kings was ſet aſide “ from reigning, in the Perſon of *Edgar Atheling*, (after “ having had Dominion here about 540 Years) and *Harold* “ became King; whoſe Title being diſputed by *William* Duke of “ *Normandy*, the latter landed at *Hafterings* in *Suffex*, with a great “ Army, where in a pitched Battle he overcame and flew *Harold* “ and 30,000 *Engliſh*, obtaining thereby the Crown, and the “ Title of *William the Firſt*, or the *Conqueror*, Anno 1066.”

He, upon the Submiſſion of the City of *London*, (where all the Biſhops and Lay Nobility met, and unaniſouſly offered him the Crown) was accordingly inaugurated in the Abbey Church at *Westmiſter*, by *Aldred*, Archbiſhop of *York*; taking a ſolemn Oath at his Coronation, “ That he would maintain all juſt and “ equal Laws, between his *Norman* and *Engliſh* Subjects.” Thus peaceably ſettled in the Throne, he began to introduce his Military Laws among the *Engliſh*; for, ſeizing upon the Lands of all thoſe who had oppoſed him under their late King *Harold*, and of others who

Doomſday Book
ſays 1412 Manors
&c. ſeiſed into
his Hands, as
Demefnes of
the Crown, fol.
523. in *ordericus
vitalis*.

who had not then submitted, or upon such-like Pretences, he divided them among his *Norman* Followers and Soldiers, to hold at Will, for Life, or a Term of Years, under the Military Tenure of Knights Service *in Capite*, whereby every such Fee (then valued at 100 Marks) was not to be parted among all Sons, but went to the eldest Son solely, and if for a long Term of Years, so to descend to Posterity; or upon Failure of Male Issue, such Knight's Fee escheated to the Crown, (the Fountain-Head of Title) as an unalienable Fee-Tail, in Remainder to the Crown, from the Circumstances before mentioned. This is the original Feudal Tenure, which was first brought into *England* by the *Norman* Race under *William* the First.

Blackstone.
Anal. Leg.
Angliæ.
Lib. Feud. 1.
Tit. 1.

ALTHOUGH other ancient Conquerors have in the same Manner divided their Acquisitions between themselves, (or the Crown) their chief Followers, and the People; yet the Tenures or Rights, by which these Lands were to be held, were, with admirable Policy, contrived by the Constitutions which followed this Conquest (namely, in *Magna Charta*) to preserve the Links of Protection and Obedience, which should hold Prince and People together; for it is natural for us to love and obey those by whom we are protected. Thus to make all hold of the King, was almost as much as Human Wisdom could do, to hinder this chief Landlord from committing Waste on his own, and from injuring those by whose Service he was to receive Assistance. But this Division of Property would not have sufficed entirely, unless there had likewise been made such a Partition of Power as would have prevented the Greater from swallowing up the Less; wherefore the Privilege of each Part of the Constitution had its Boundaries, as well as Lands and Fields their Land-Marks, to be distinguished and restrained by. This was our ancient Government before the Conquest; being founded on the Tenures established by the *Goths* throughout *Europe*, wherever they gained a Settlement,

arising

Maxim of Law,
hujus Temporis.

arising from the natural Consequence of such bold Expeditions; for when a Project of this kind was formed among them, it was requisite that a Captain or Leader should be chosen, of sufficient Abilities to execute them. He who was found qualified with such Courage and Conduct, easily obtained supreme Authority over all the rest; but the first Expence of these Expeditions, being very great, he associated with him certain of his principal Men, or Countrymen, who had also Followers and Dependants of their own. All these, in Consideration of what they contributed towards the Common Cause or Design, either in Service, Ammunition, or Money, were not only to share in the conquered Lands, but, together with those Lands, to enjoy certain Powers and Privileges, and also to be distinguished, by Names or Titles of Honour, from the rest of the People.

Origin of Barons

FROM hence it is that most, if not all Northern Nations have still among them the Titles of Peers, Palatines, Barons, Earls, Graafs, Counts, Margraves and Dukes, who arriving at a prime Rank, under these, or the like Appellations, became a distinct Part or Member of the Body Politic, and were to protect those who fought under their Banner, or followed their Fortunes; and were vested by the Constitution with eminent Power, as a Counterpoise between the Prince and People; but the Labour and Dangers of these Invasions, lying chiefly on the Common People, (by whose Hands the several Battles must be fought, &c.) they, no doubt, would not have been tempted abroad, if it were not for the Hopes of bettering their Condition; and not to become Beasts of Burthen to those whom they themselves had raised to be Kings and Lords over them; for which Reasons, by mutual Compact with their Leaders, Dukes or Generals, it was agreed to give them a certain Share in the future Conquest; from which are derived the Rights of the People, among whom the Lands were divided; wherein the better Sort had Freeholds, and

those of inferior Degree held, under certain Services, of their Captains, Lords, and Leaders.

THIS, their Military Constitution, gave likewise Form to their Civil Government. Their King, as he was the Head of the Army in the moving Camp abroad, so, when they came to settle, he was the Head of the Commonwealth at home: And as the principal Officers and chief Captains had been also his Council of War; so, when they had Peace and Rest, they would not quit that Share in the Administration of Affairs, which they had occupied in the Field; and their Titles and Lands being descendible, they became, by Virtue of their Tenures, an hereditary and standing Council to the Prince, whom in the Field as they were wont to advise in difficult Matters for the common Good of the Whole, and to lay before him the Necessities and Grievances of their Followers and Dependants, the Common People, so at home it grew to be their Right to do the same. But when these *Norman* Invaders began to fix and mingle with the native *English*, they made Compacts and Agreements with them, and by Inter-marriages became an united Body, which, as it likewise grew in Wealth and Possessions so considerable as to form another distinct Member of the State, composed of Persons elected and chosen from among themselves, became the third Estate of the Kingdom, and was called the Commons; which Three Estates now form the Parliaments of *Great Britain*. All these Northern Establishments, originally, had their Estates, Assemblies, Diets, or Parliaments, by whom Laws were enacted, and they continued under that Form of Government, without any material Change or Intermission, until about the Year 1500; when Despotism took place in some of them, and is maintained by standing Armies in *Denmark*, *France*, *Spain* and *Portugal*, to this Day.

King.

House of Peers.

House of Commons.

D

BUT

Gibr. on
Tenures, Lord
Raymond 1024,
and 1229, 102.
Semner 8, 9, 115
172.

Saxon Leage.

Leges Aluredi
cap. 26. Gloss.
in 10 scriptores.

Inuulgatus et
seruilius.

Specim. de Feudis,
cap. 9.

BUT Military Government, together with its Rules, comprised under this Tenure, Condition, and Title, was utterly unknown to *English* Men in those Days, among whom all Lands were not only Free, and under no Constraint whatever, but were alienable and partible at the Pleasure of the Thanes, or Free Lords, by Will or other Deed, as held by Book or public Registry under Free and Common Soccage, thence called Book-Land; that is to say, under general Allegiance to defend the Crown and Kingdom; and such as were Grantees under these Original Freeholders, or Lords of Manours, were called Socmen or Villanes, whose Customs and Usages, both as to Alienations and Inheritances, were subject to such Laws, Fines and Agreements, as were previously and mutually agreed by Landlord and Tenant, at the Time of granting and Acceptance thereof. From hence our Copyholders, at this Day, also Tenants for Lives or Years, and Leaseholders, may take their Rise; for it is very certain that the whole *Materia Legica*, or Mass of modern Law-Compilations, hath not invented, or produced, any other than these Tenures, whereby Lands were originally held in *England* before this Period of the Conquest; the first Branch of which was called *Prædium Nobile et immane, liberum a Servitiis, Allodium descendibile, a Viro intestato, omnibus Filiis, secundum Legem Naturæ et Gentium*: Nor could it be devised by Will from his Children, until they were portioned out and provided for, according to universal Law, under the indispensable Obligation due from all Men to the Society they live in; which Power of controuling, and even reversing Wills upon such Pleas, subsists in the Court of Chancery in full Force at this Day, and that too by the particular, as well as general Tenour of *Magna Charta*. An *English* Freehold, as before defined, is a Free and Noble Possession, exempt from all vulgar Services and Vassalages; a Testamentary Estate, an *Allodium* descendible, according to the Law of Nature and of Nations, to all Sons alike,

(in Gavel-kind) in Case of Intestature, was also thus impowered by the ancient Common Law and Free Liberties and Usages of the *English*, so often mentioned and confirmed in every subsequent Grant of *Magna Charta*; when such were most apparently invaded and corrupted by the Tyrannical Exactions of the *Norman* Feudists.

THE Military Tenants, or Knights *in Capite*, to their Despotic Monarch, by these Grants became invested with the respective Tenants, Villeins or Socmen, who occupied Lands under their late *English* Lords, and like true Upstarts (for *asperius nihil est humili cum surgit in altum*) displayed their newly-acquired Power, in the greatest Oppressions over their wretched Vassals; whose Wives, Daughters, &c. were at the Will of the Lord, who exacted arbitrary Fines and slavish Services, (too many and too long to be here enumerated) claiming, in short, the Bodies, Goods, Guardianship, and Disposal of them, even long after the Crown had remitted these Feudists therefrom, and although the said Feudists were constantly enjoined, in every Renewal of *Magna Charta*, to behave with the same Lenity to their Vassals, that the King had therein evinced to themselves.

Knight derived from the German *Knecht*, or Servant of the King. Villeins, as so named, meerly from *Villa*, or Village Inhabitants, not in the gross Acceptation of the Word as now held. Socmen were so named, from a kind of Shoe, or Wooden Sandall or Sock, worn by labouring Men, like the Cottagers upon Lands now-a-days, who work out their Rent by the Tally.

THUS, even in this first Reign, began these Oppressions, which increasing, soon roused the native *English* from their Lethargy; and they, under the Conduct of *Frederick*, Abbot of *St. Alban's*, raised a numerous Army, setting up *Edgar Atheling* (the lawful Heir of *Edward* the Confessor) for King; at which *William*, the Conqueror, being greatly alarmed, was prevailed on by the wife *Lanfrank*, then Archbishop of *Canterbury*, to deal more gently with the *English*; and consenting to a Treaty with them at *Berkhamsted*; where, after much Debate, he, in the Presence of them all, solemnly swore on the Holy Evangelists, "That he would observe and confirm all the good, approved, and ancient Laws

" of the Kingdom, which the pious Kings his Predecessors, and
 " chiefly King *Edward* the Confessor, had ordained." Upon which
 the *English* being satisfied, all returned peaceably to their
 Habitations.

AFTER these Things, he granted to the City of *London* a
 Charter, written in the *English-Saxon* Tongue, as follows :

" *William* Cyng, greit
 " *William* Biscop and
 " *Godfreyes* Portgerefan
 " and eall the Burgh
 " waren the on *Lunden*
 " be on, &c. &c.

Ex Libro pervetusto.

Cuique Hæredes Suc-
cessoresque sui Liberi, &
nullum Testamentum : Si
Liberi non sunt, Fratres,
Patruī, Avunculi,—say
 our *Saxon* Progenitors.

THAT is, *William*, King, greeteth
William the Bishop, and *Godfrey* the
 Port-reeve, and all the Burgeses that in
London be, *French* and *English* : And I
 do you to wit, that I will that you
 enjoy all the Law, which you did in the
 Days of *Edward*, King, namely, the
 Confessor ; and I will that each Child
 shall be his Father's Inheritor after his
 Days; and I will nill suffer, that any Man
 you any Wrong offer. God you keep.

Out of the most ancient Book, at
Westminster.

To every Man, his Children are the
 Heirs and Successors, and there be no
 Testament : If there are no Children,
 then his Brothers, Uncles of the Father's
 side, and Uncles on the Mother's side,
 inherit.

THE original Charter, sealed with green Wax, is deposited
 in the Exchequer-Office, at *Westminster*. Under this first general
 Confirmation by Oath, of observing all the ancient Laws of King
Edward the Confessor, arises the Right and Common Law of
 Gavel-kind ; still claimed by, and allowed as Law to, some Parts
 of

of the County of *Kent*, and elsewhere, as being a Custom voluntary, reasonable, and just; nor does any particular Charter appear for that County, more than the rest of all *England*; but every County, City, Borough, Port, and Place, in the whole Realm, was then, and still continues to be, equally entitled to the same Privilege, (except where Military Tenures took place) as will appear hereafter by *Magna Charta*.

THE Law of Gavel-kind was simply this, that as every Parent is under the Moral, as well as Political Obligation, to provide for his Offspring, and not to leave any one or more of his Children destitute, whereby they might become burthensome to the Community; so this of Gavel-kind, (explained thus, Give all Kind, or, as in the ancient and modern *Saxon* Tongue, *Gebe alle Kindern*, Give all Children) did oblige every Parent to do the same: Nor could they disinherit any Male Child by Will or other Deed, or deprive him of an equal Share with his Brethren in the Inheritance, unless for Crimes, which the Civil Power would also have condemned him for, in the like Forfeiture. In case of Intestature, Distribution was made to the Children by Persons in Ecclesiastical Authority, who, in those Times, were the chief Dispensers of the whole Civil Administration, (thence termed *Clerici*, or Clerks); for we read in *Matt. Paris*, Anno 1190, *Siquis subitaneâ Morte vel quolibet Casu præoccupatus fuisset, ut de Rebus suis disponere non posset, Distributio Bonorum ejus, Ecclesiasticâ fiebat Auctoritate*. Nor is there any Alteration to this Day, other than that Freehold Lands are, through the grossest Abuse of true Common Law, withheld from this just and equitable Distribution, to compliment Primogeniture at the Expence of all the Younger Branches of an Orphan Family; by which the Public becomes burthened with a numerous Poor, for whom Places and Pensions must be multiplied; to earn which from the Hands of Ministerial Power, these unhappy Outcasts from the Common Rights of Nature and of all Mankind, have

See Consideration on the Poor and Taxes, in: *Review*, May, 1765.

have too often, perhaps, become the Instruments of bringing on their Country, in a View of Subsistence and Employment, those Wars which have so increased the present enormous Public Debt and Taxes. To descant upon so great a Solecism, seems here needless, because, in the Course of several Publications during the last Sessions of Parliament, the most respectable Authorities in the Law have been quoted by Name to prove it contrary to Equity, Civil, Municipal Laws, and good Policy; and that so notorious a Breach of our Constitution continuing to afflict and ruin an innocent Race of Orphans, must be a Disgrace, if not Impeachment of our National Justice, as well as Wisdom: I shall therefore confine myself solely to the Consideration of the general Point in Question, Whether the Canon of Inheritance laid down in our Common Law Books (as copied implicitly from the *Norman*) can at this Time be deemed, or proved to be, the true *English* Common Law, delivered down, from Age to Age, by our renowned Forefathers? who, by so many noble Oppositions to arbitrary Power, bequeathed to their Posterity what we ought to preserve inviolably to ours, *Magna Charta*; for which Purpose the plain Text thereof will be set forth in the Sequel, lest, besides the general Words of all Free Customs and Liberties, the Deduction of this Title to an equal Inheritance (also expressed in the particular Words *omnibus Benis*, universally allowed to be construed Lands as well as Personals, which all Sons inherit) should be rendered obscure or unintelligible to any Reader.

UPON the Demise of *William* the First, or the Conqueror, Anno 1087, who, as before observed, confirmed by Oath the antient *English* Laws of King *Edward*, among which was, that all Lands held by Freemen, or under Common and Free Soccage, remained partible among all Sons, under the Title of Gavel-kind; his Son *William* the Second, called *Rufus*, succeeded to the Crown, and at his Coronation took the same solemn Oath to preserve Justice,

Justice, Equity, and Mercy, throughout his Kingdom, confirming his Father's Grants to the whole Realm.

HE, however, having a contested Title to struggle with, against his elder Brother *Robert*, as well as other Broils at home with the *Scots* and *Welsh*, occasioned his *Norman* Soldiers still to usurp all Honours, Preferments, as well as the Lands, throughout *England*, and by the Power of the Sword to exercise Military Law upon both Ecclesiastics and Laymen, during his Reign of thirteen Years. He dying *Anno* 1101, was succeeded by his younger Brother, *Henry I.* who, at his Coronation, took the usual Oath, and to the farther great Satisfaction of the People, confirmed the Laws of King *Edward*, by Charter, to which all the chief Men of the Nation were Witnesses, *Anno* 1101, and of which, Copies were sent, in the same Year, to all the Counties in *England*, to be deposited in the Principal Monasteries, written in the *Latin* Tongue, as follows.

*Will. Malcomb.
M. Paris.*

Institutiones Henrici Regis.

*Anno Incarnationis Dominice
MCI, Henricus Filius Willielmi
Regis, post Obitum Fratris Willielmi,
Dei Graciâ Rex Anglorum, omni-
bus Fidelibus, Salutem. Sciatis me,
Dei Misericordiâ & Communi
Concilio Baronum totius Regni
Angliæ ejusdem, Regem coronatum
esse; et quia Regnum oppressum
erat injustis Exactionibus, ego,
Dei Respectu & Amore quem erga
vos habeo, Sanctam Dei Ecclesiam
imprimis liberam facio, ita quod
nec vendam, nec ad firmam pono,*

Institutions of Henry the King.

In the Year of the Incarnation
of our Lord MCI, *Henry* the
Son of *William*, after the Decease
of his Brother *William*, by the
Grace of God, King of the
English, unto all his faithful
Subjects, Health. Know ye that
I, thro' the Mercy of God, and
the Common Council of the
Barons of the whole Kingdom
of *England*, am now to be
crowned King of the same,
and because the Kingdom was
oppressed by unjust Exactions,

nec

nec mortuo Archiepiscopo, sive Episcopo, sive Abbate aliquid accipiam, de Dominico Ecclesiæ, vel de Hominibus ejus, donec Successor in eam ingrediatur; et omnes malas Consuetudines, quibus Regnum Angliæ injuste opprimebatur, inde aufero, quas malas Consuetudines ex parte hic pono.

I, out of the Fear of God, and for the Love which I bear towards you, in the first place do make free the Holy Church of God, so as I will not sell, nor let to Farm, nor upon the Death of Archbishop, Bishop, or Abbot, will accept any thing belonging to the Domains of the Church or its Clerks, until a Successor be inducted thereto; and all evil Customs, with which the Kingdom of *England* was oppressed, I take from thence, which evil Customs I here put quite away.

Lagam Eduardi Regis vobis reddo, &c.

The Laws of King *Edward* I restore unto you, &c.

Ex Libro rubro in Scaccar. Regis, Westmon.

Extracted from the Red Book in the Exchequer, at *Westminster*.

FROM this, and the subsequent Charters, are derived all the Rights, Privileges, and Liberties, which the Church of *England* enjoys at this Day; as it does also in every Place confirm the Common Law, viz. the well-known Free Customs and Usages allowed by *Alfred* and *Edward Confessor's* Laws, as peaceable, reasonable, beneficial and consistent.

THE pretended Title of Primogeniture to succeed solely, in all Free and Common Soccage Tenures, as well as in Military Tenures, doth not appear so much as named, much less to be admitted as Common Law, in these early Times; because then
all

all the chief Lawyers and Justiciaries, mostly Churchmen, made no Distinction between Landed or Personal Estates, but ever divided both among the Children, agreeable to the Equal Laws of *Edward the Confessor*, by *William the First* so plainly confirmed, and by this Charter of *Henry I.* and also supposing any such Usurpation had taken Place, through the Weight of Power, yet Restitution is commanded to be made by the same Charter; and all such evil Customs entirely removed and taken away, as follows.

Charta Henrici Regis I. Anno Dom. 1100.

Siquis Aliquid de Rebus meis vel Rebus Alicujus, post Obitum Willielmi Regis Fratris mei cepit, totum cito, sine Emendatione, reddatur; & siquis inde Aliquid, ille super quem inventum fuerit michi graviter emendabit. Testibus M. Londini, Episcopo, &c. &c.

If any one hath taken any thing of my Lands or Property or of that belonging to any other Person, after the Decease of my Brother *William* the King, it shall be immediately restored without Amends; and if any should retain any Part thereof afterwards, he on whom the same may be found, shall heavily amend the same to me; *id est*, be grievously amerced.

THE Charter of King *Stephen*, who succeeded *Henry I.* Anno 1135, runs thus, *verbatim*.

Stephanus, Dei Gratia, Rex Anglie, Justiciariis, Vice Comitibus, Baronibus & omnibus Ministris et fidelibus suis, Francis et Anglicis, Salutem. Sciatis me concessisse et presenti Carta, confirmasse omnibus Baronibus et Hominibus meis de Anglia omnes Libertates

Stephen, by the Grace of God, King of *England*, to the Justiciaries, Viscounts, Barons, and all other his Ministers and faithful Subjects, *French* and *English*, Health. Know ye, that I have by this present Charter conceded and confirmed to all Barons and

et bonas Leges, quas Henricus Rex Anglie, Avunculus meus, eis dedit et concessit, et omnes bonas Leges et bonas Consuetudines eis concedo quas habuerunt Tempore Regis Edwardi. Quare volo et firmiter precipio, quod habeant et teneant omnes illas bonas Leges et Libertates de me et Heredibus meis, ipsis et Hæredibus suis, libere, quiete et plenarie; et prohibeo, nequis eis super iis Molestiam vel Impedimentum vel Diminutionem faciat super foris Facturam meam. Teste W. Martel apud London.

other my Liege Men of England, all Liberties and good Laws, which Henry King of England, my Uncle, gave and granted to them, and do grant to them all good Laws and Customs, which they might have had in the Time of King Edward. Wherefore I will, and firmly command, that they may have and hold all those good Laws and Liberties from me and my Heirs, unto them and their Heirs, fully, freely, and quietly; and I do forbid, lest any should do, or cause the least Molestation, Impediment, or Diminution to them, or upon these my public Declarations. Witness *William Martel*, in London.

Ex Copiâ ab Antiquo MS. Biblioth. Cotton. Claud. D. 2. fo. 75.

From a Copy of an Ancient MS. in the Cottonian Library, Claud. 2. fo. 75.

IN the Second Charter granted by this King, which respects chiefly Ecclesiastical Affairs, the Copy recited by *Hagustald* an Historian of those Times, runs thus.

Siquis Episcopus, vel Abbas, vel alia Ecclesiastica Persona, ante Morte sua rationabiter distribuerit vel distribuenda statuerit, firmum manere concedo. Si vero Morte preoccupatus fuerit, pro Salute

IF any Bishop or Abbot, or other Ecclesiastical Person, would, in a reasonable Manner, distribute his Estate, or appoint, before his Death, that it should so be distributed, I do permit
Ani-

*Animæ ejus Ecclesie Consilio eadem
fiat Distributio. Apud Oxon.
A. D. ƴ. 1136. In Communi
Concilio.*

the same to remain firm. But
if he should be first seized by
Death, then, for the Salvation of
his Soul, the same Distribution
shall be made by the Council
of the Church. At *Oxford*,
A. D. ƴ. 1136. In Common
Council.

HERE we may see Power to make Wills or Testaments for a reasonable Distribution of the Clergy's Goods or Possessions, or in Case of Intestature, such Power delegated to the same Ecclesiastical Authority, as those of Lay Persons were; for though the Clergy were not permitted to marry in these Times, yet it was thought a Charity due to the Soul of the Departed, that his worldly Effects should be applied in the most just and equitable Manner, namely, to his nearest Relations; and however some Abuses may have afterwards appeared in this and other Powers, vested in the Clergy, the Rule itself doth not seem in any wise unbecoming Notice, if not Approbation, in this more refined Age, in making of Wills.

To King *Stephen*, who died in the Year 1154, succeeded *Henry* the Second, who, soon after his Coronation, granted the following Charter.

*Henricus, Dei Gratia, Rex
Anglie, dux Normannie et Aquitaniae,
Comes Andegavie, Baronibus
et fidelibus suis, Francis et Anglicis,
Salutem. Sciatis me ad
Honorem Dei et Sancte Ecclesie et
pro Communi Emendatione totius
Regni mei concessisse et reddidisse et*

*Henry, by the Grace of God,
King of England, Duke of
Normandy and Aquitain, Earl
of Anjou, to his Barons and
faithful Subjects, French and
English, Health. Know, ye that
I, to the Honour of God, and of
the Holy Church, and for the*
E 2 *presenti*

presenti Cartâ meâ, confirmasse Deo et Sancte Ecclesie, et omnibus Comitibus et Baronibus, et omnibus Hominibus meis, omnes Consuetudines quas Henricus Avus meus eis dedit et concessit. Similiter etiam omnes malas Consuetudines quas ipse delevit et remisset ego remitto, et deleri concedo pro me et Heredibus meis. Quare volo et firmiter precipio, quod Sancta Ecclesia, et omnes Comites, et Barones, et omnes mei Homines, omnes illas Consuetudines, et Donationes et Libertates, et liberas Consuetudines, habeant et teneant libere et quiete, bene et in pace et integre de me et Heredibus meis, sibi et Heredibus suis adeo libere et quiete, et plenarie in omnibus sicut Rex Henricus Avus meus eis dedit et concessit et Carta sua confirmavit. Teste R. de Lucie.

*Ex Libro Rubro, in Scacc.
Regis apud Westmon.*

Common Amendment of my whole Kingdom, have granted and restored, and by this my present Charter have confirmed to God, and to the Holy Church, and to all my Earls, Barons, and to all my Liege Men, all and every the Customs, which Henry my Grandfather gave and granted unto them. In like manner, also, all the evil Customs, which he abolished and remitted, I remit, and for me, and for my Heirs, do grant to be abolished and blotted out. Wherefore I will and firmly command, that the Holy Church, and all Earls, Barons, and all my Liege Men, all those Customs, and Donations and Liberties, and Free Customs, may have and hold freely and quietly, well and in peace, and entirely from me and my Heirs, to themselves and their Heirs, thus freely and quietly, and fully in all Respects, Matters and Things, as King Henry my Grandfather gave and granted to them, and confirmed by his Charter. Witness, R. de Lucie, Chancellor.

From the Red Book in the Exchequer, Westminster.

HENRY

HENRY the Second, dying in the Year of our Lord 1189, was succeeded by his eldest Son *Richard* the First, who at his Coronation, accompanied by a noble Train of Earls, Barons, Knights, and others, as well of the Clergy as Laity, who pompously followed him to the High Altar in *Westminster-Abbey*, most solemnly laying his Hands on the Holy Evangelists, took the following formal Oath, Word for Word.

“ THAT he would observe Peace, Honour and Reverence,
 “ to Almighty God, his Church and Ministers, all the Days of his
 “ Life; that he would exercise Justice and Equity towards the
 “ People committed to his Charge; and that he would abrogate
 “ all evil Laws and unjust Customs, and make, keep and sincerely
 “ maintain those that were good and laudable;” and before he was
 crowned, the Archbishop of *Canterbury* adjured him solemnly, in the
 Name of the most High God, “ Not to presume to take this Dig-
 “ nity upon him, unless he resolved inviolably to keep those Vows
 “ and Oaths he just then had made; to which the King answered
 “ that by God’s Grace he would faithfully perform them all.”
 Upon which the Archbishop set the Crown on his Head, delivered
 the Sceptre into his Right Hand, and the Rod Royal into his Left,
 in which manner he was conducted to the Throne, attended by
 the Archbishops of *Triers*, *Rouen*, and *Dublin*, with the other Bishops,
 Abbots, and Clergy, in their proper Habits. Is it then to be
 imagined, that after so explicit and solemn an Oath, such an evil
 and unjust a Custom, as the utter Destruction of Thousands of
English Orphans, by disinheriting them from their Cradles, and
 giving up their sole Subsistence to Primogeniture, could possibly be
 held, deemed, or even attempted, much less obtain Sanction from
 the Common Law of *England*? Whatever the boundless Authority,
 which (in these, and many subsequent Reigns) was constantly
 usurped by the Land-holders and Barons might effect, can never
 be brought as Precedents to make it lawful, under our happy
 Dispensation

Observations on
the Poor, &c.
London, 1765.
Becket and Le
Hondt.

Dispensation of just Government. It is well observed by a sensible Author, " That upholding particular Families in their hereditary
" Dignity and Opulence, must stand in Competition with the
" Public Good. It would be better that even Entails and Marriage-
" Settlements (by Deeds) were limited not to exceed one Half
" of the Landed Inheritance, that the younger Children might
" still have something to shew for their Parentage ; something,
" wherewith to combat the Difficulties of Life ; something to lay a
" Foundation for an honest Profession, and set them above the
" Prostitution of their Faculties and Honour to the ignoble, yet
" usual resource of burthening their Country, as Placemen and
" Pensioners."

THE Compiler of these great Authorities does not presume to offer, or attempt to obtrude any Sentiment of his own, because the candid Reader may see, and be convinced, that no Custom was ever admitted as Common Law, but such as was conformable to the Law of Nature and Equity, a much clearer Guide than the particular Opinions, Comments, or Determinations of Courts in former, or modern Times, which have been contradictory even to a Proverb ; " The Uncertainty of the Law." No sentimental Position, of Lord *Coke*, or any other, can operate as Law, when both Reason, and the Common Rights of Mankind, appear so evidently against it.

Blackiston,
Introduct. Anal.
Leg. Angliæ.
1762.

" THERE is no Transaction in the Ancient History of *England*
" more interesting and important, than the Rise and Progress,
" gradual Mutation and final Establishment of those Charters,
" emphatically stiled the Great Charter of our Liberties, and
" Charter of the Forests, and yet there is none that has been delivered
" down to us with less Accuracy and Historical Precision : This
" has often betrayed our very best Historians and most painful
" Antiquarians into gross and palpable Errors, as will in some
" Measure appear from the following Deduction of them, to adjust
" and remedy which, is the principal End of the present Publication,
" wherein

“ wherein the Reader may expect an authentic and correct Edition
 “ of those Charters, &c. with some other auxiliary ones, Statutes,
 “ and corroborating Instruments, carefully printed from the Originals
 “ themselves, or (where those are not in being) from cotemporary
 “ Inrollments and Records.”

HENCE may we not fairly conclude, that whoever (among the Law Writers in those Days) laid down Descents in Primogeniture, solely, (while courting their own Preferments by flattering Men in Power) could not be so easily detected either in their Fraud, or Ignorance, when they endeavoured to intail so great a Dishonour on the Laws of their Country: Judges in those Days were but Men, and that some were also fallible, and others corrupt, as Occasion served, let History suffice to prove.

MOST of this Monarch's Reign being spent in an Expedition to the Holy Land, where he performed many noble and gallant Exploits, but, in his Return through *Germany* incognito, was discovered and taken Prisoner by the Emperor, for whose Ransom an immense Sum, (1100000 Marks) was raised by his Justiciary *Hubert*, and sent out of *England*. He dying, *Anno* 1199, his sole surviving Brother, *John*, succeeded to the Crown and Kingdom; who, at his Coronation, took the accustomed Oath to maintain and uphold all just Laws and Usages, and to abrogate and remove the bad, &c. also granted the Great Charter of our Liberties. This also, our Historians agree, was, for the most Part, compiled from the ancient Customs of the Realm, or the Laws of King *Edward* the Confessor, by which they usually mean the old Common Law, (*viz.* Gavel-kind) which was established under our *Saxon* Princes, before the Rigours of Feodal Tenure, and other Hardships, were imported from the Continent by Kings of the *Norman* Race or Line; and this was obtained from him *Anno* 1215, in the 17th

Introd. *Anal.*
Leg. Angl.
 fol. 12.

of his Reign, of which the Articles demanded and agreed to, were as follow.

Articuli Magne Carte Libertatum,
sub Sigillo Regis Johannis.
Ista sunt Capitula que Barones
petunt, et Dominus Rex
concedit.

*The Articles of the Great Charter
of Liberties, under the Seal of
King John. These are the
Heads which the Barons request,
and our Lord the King grants.*

Feodal Tenures,

I. *Post decessum Antecessorum,
Heredes plene Etatis habebunt
Hereditatem suam, per antiquum
Relevium, exprimendum in Carta.*

I. After the Decease of
Ancestors, the Heirs of full
Age shall have his Inheritance
by the ancient Relief, to be
expressed in the Charter.

Feodal Tenures,

II. *Heredes qui infra Etatem
sunt et fuerint, in Custodia, cum
ad Etatem pervenerint habebunt
Hereditatem suam, sine Relevio
et Fine.*

II. The Heirs who are, or
may be, within or under Age,
under Guardianship, when they
become of Age shall have their
Inheritance, without Relief or
Fine.

Free Soccage
Men,

XVI. *Si aliquis liber Homo
Intestatus decesserit, Bona sua per
Manum proximorum Parentum
suorum, et Amicorum, et per
Visum Ecclesie distribuantur.*

XVI. If any Free Man should
decease Intestate, his Goods are
to be distributed by the Hands
of his next of Kin, Relations,
and Friends, and by Decree of
the Church.

In this Place the Words, Next of Kin, doth not mean one
single Person, but collaterally all in the next collateral Line; so
in *Magna Charta*, *Heredes* cannot imply Primogeniture alone,
but the whole Line of uterine Brothers; for the Quibble of
making

making the first Proximity of Blood to the Father is confuted, because no Blood can be so near to a Man as that which came last out of him; setting up one quaint Plea, *Versus Alterum*.

XXV. *Siquis fuerit disseisitus vel prolongatus, sine Iudicio, de Terris, Libertatibus, et Jure suo, statim ei restituatur; et si Contentio super hoc orta fuerit, tunc inde disponatur per Iudicium 25 Baronum, et ut illi qui fuerint disseisiti, Rectum habeant sine Dilatione, per Iudicium parium suorum in Curia Regis.*

XXV. If any one should be disseized or delayed, without Judgment of Law, from his Lands, Liberties, and Just Right, it shall immediately be restored to him; and if any Contention upon this should arise, then let it be decided by the Judgment of 25 Barons, and as they who shall have been disseized may have Right without Delay, by Judgment of their Equals, in the Court of the King.

XXIX. *Ne Corpus Liberi Hominis capiatur, nec imprisonetur, nec disseisetur, nec utlegatur, nec exuletur, nec aliquo Modo destruatur, nisi per Iudicium Parium suorum, vel per Legem Terre.*

XXIX. Let not the Body of a Free Man be taken, nor imprisoned, nor disseized, nor out-lawed, nor banished, nor in any Manner destroyed, unless by Judgment of his Equals, or Peers, or the Law of the Land.

XXX. *Ne Jus vendatur, vel differatur, vel vetitum sit.*

XXX. Let not Justice be sold, deferred, or denied to any one.

Free Soccage Men.

XLIX. *Hæc est Forma Securitatis ad observandum Pacem et Libertates inter Regem et Regnum.*

Barones eligent 25 Barones de Regno, quos voluerint qui debent pro totis Viribus, suis observare, tenere, et facere observari Pacem et Libertates quas Dominus Rex eis concessit, et Cartâ suâ confirmavit; ita videlicet, quod si Rex, vel Justiciarius, vel Ballivi Regis, vel aliquis de Ministris suis, in Aliquo erga Aliquem deliquerit, vel aliquem Articulorum Pacis aut Securitatis transgressus fuerit, et Delictum ostensum fuerit quatuor Baronibus de predictis 25 Baronibus; illi quatuor Barones accedent ad Dominum Regem, vel ad Justiciarium suum, si Rex fuerit extra Regnum, proponentes ei Excessum; Petent ut Excessum illum sine Dilatione faciat emendari; et si Rex, vel Justiciarius, ejus illud non emendaverit, si Rex fuerit extra Regnum, infra rationabile Tempus, determinandum in Cartâ, predicti quatuor referent Causam illam ad Residuos de illis 25

XLIX. This is the Form of the Security to keep the Peace and Liberties between the King and Kingdom.

The Barons may elect 25 Barons of the Kingdom, whom they can willingly trust with their whole Means, to keep, hold, and cause to be kept, the Peace and Liberties which our Lord the King hath granted to them, and by his Charter hath confirmed; so as, namely, that if the King, or the Justiciary, or the Bailiffs of the King, or any other of his Ministers, in any Matter towards any Person should be delinquent, or offend, or may transgress any of the Articles of the Peace and Security, and the Wrong may be shewn to four Barons of the said 25 Barons; they the said four Barons may attend and come to our Lord the King, or to his Justiciary, if the King be out of the Kingdom, laying open to him the Damage: They may request that he will cause the said Wrong, or Damage, to be forthwith, and without Delay,
Baroni-

Baronibus; et illi 25 Barones, (vel major Pars eorum, in Sequenti) cum Communâ totius Terre, distringent et gravabunt Regem Modis omnibus quibus poterunt; scilicet, per captionem Castrorum, Terrarum, Possessionem, et aliis Modis quibus poterunt, donec fuerit emendatum secundum arbitrium Eorum, salvâ Personâ Domini Regis, et Regine, et liberorum suorum, &c.

Magna Charta, Regis Johannis, XV. Die Junii, 1215, Anno Regni 17.

Johannes, Dei Gratia, Rex Angliæ, Dominus Hibernie, Dux Normannie et Aquitanie, Comes Andegavie, Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus, Justiciariis, Forestariis, Vicecomitibus, prepositis Ministris, et omnibus Ballivis et fidelibus suis, Salutem.

amended; and if the King, or his Justiciary, should not amend the same, if the King should be out of the Kingdom, within a reasonable Time, to be expressed in the Charter, the beforesaid four Barons may refer that Cause to the Residue of those 25 Barons; and those 25 Barons, with the Commons of the whole Land, may distrain and burthen the King in all Manner of Ways they are able, to wit, by taking of his Castles, Lands, Possessions, and by any other Means whereby they are able, until it be amended according to their award, saving the Person of our Lord the King, Queen, and their Children.

The Great Charter of King John, granted 15th Day of June, A.D. 1215, and of his Reign 17.

John, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitain, Earl of Anjou, to the Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Viscounts, Lieutenants, and all Bailiffs and faithful Subjects, Health.

Sciatis nos intuitu Dei, et pro Salute Anime nostre, et omnium Antecessorum, et Heredum nostrorum, ad Honorem Dei, et Exaltationem sancte Ecclesie et Emendationem Regni nostri, per Consilium venerabilium Patrum nostrorum, Stephan. Cantab. Archiepiscopi, totius Anglie Primatis, et sancte Romane Ecclesie Cardinalis; Henrici Dublin. Archiepiscopi; Willielmi London.; Petri Winton.; Jocelini Bathon. et Glaston.; Hugonis Lincoln.; Walteri Wygorn.; Willielmi Covent.; et Benedicti Rossen.; et Nobilium Virorum Willielmi Mariscalli, Comitis Penbrok.; Willielmi Comitis Sar.; Willielmi Comitis Warenn.; Willielmi Comitis Arundell.; Alani de Galkweye; et aliarum fidelium Nostrarum.

I. In primis, concessisse Deo, et hac presenti Carta nostra confirmasse, pro nobis et Heredibus nostris in perpetuum, quod Anglicana Ecclesia libera sit, et habeat Jura sua integra, et Libertates suas illesas, et ita

Know ye, that by Inspiration of God, and for the Salvation of my Soul, and those of all our Ancestors, and of our Heirs, and to the Honour of God, and Exaltation of his holy Church, and Amendment of our Kingdom, by the Council of our venerable Fathers *Stephen*, Archbishop of *Canterbury*, Primate of all *England*; *Henry*, of *Dublin* Archbishop; *William*, of *London*; *Peter*, of *Winchester*; *Joceline*, of *Bath and Glastonbury*; *Hugh*, of *Lincoln*; *Walter*, of *Worcester*; *William*, of *Coventry*; and *Benedict*, of *Rochester*, Bishops; and of our Noblemen, *William Marechal*, Earl of *Pembroke*; *William*, Earl of *Salisbury*; *William*, Earl of *Warren*; *William*, Earl of *Arundell*; *Alan*, of *Galkway*; and of others, our faithful Subjects.

I. In the first Place, we have granted to God, and by this our present Charter have confirmed, for ourselves, and our Heirs for ever, that the Church of *England* should be free, and may have its Rights entire, and its Liberties
volumus

*volumus observari quod apparet
ex eo, &c.*

unhurt, and so we will have it
observed and kept, &c.

*Concessimus etiam omnibus liberis
Hominibus Regni nostri, pro nobis
et Heredibus nostris in perpetuum,
omnes Libertates subscriptas,
habendas et tenendas eis et
Heredibus suis, de nobis et
Heredibus nostris.*

We likewise grant to all
Freemen of this our Kingdom,
for us and for our Heirs for ever,
all the Liberties hereunder
written, to have and to hold to
them and their Heirs, from us
and our Heirs.

II. *Siquis Comitum vel
Baronum, nostrorum sive aliorum
tenentium de nobis in Capite per
Servitium Militare, mortuus fuerit,
et cum Decesserit Heres suus plene
Etatis fuerit, et Relevium debeat,
habeat Hereditatem suam per
antiquam Relevium; scilicet, Heres
vel Heredes Comitum de Baronia,
Comitis per Centum Libras, Heres
vel Heredes Baronis de Baronia
integra per Centum Libras; Heres
vel Heredes Militis de Feodo
Militis integro per Centum Solidos,
ad plus; et qui minus debuerit
minus, det secundum antiquam
Consuetudinem Feodorum.*

II. If any of our Earls or
Barons, or of others holding of
us in *Capite* by Military Service,
do die, and at his Decease his
Heir should be at full Age, and
should owe Relief, he shall have
his Inheritance by the ancient
Relief; to say, the Heir or Heirs
of an Earl of an entire Barony;
Earl by one Hundred Pounds;
Heir or Heirs of a Baron of a
Barony entire by one Hundred
Pounds; Heir or Heirs of a
Soldier or Knight of a whole
Feud, by one Hundred Shillings,
or more; and who owes less
shall give less, according to the
ancient Custom of Feuds.

Thus much for ascertaining the Succession in Feodal or
Military Tenures, where a Knight's Fee is limited to one Hundred
Shillings, or Marks, a Year. If an Ancestor dies possessed of
Lands.

*See Prærog.
Regis Edw. II.
Anno Reg. 17. de
Partitione. 1.
Cap. 5. Fol. 111.*

Lands worth twenty such Fees, he might have as many Heirs, upon each paying the Ancient Relief; but nothing appears hereby of Primo-geniture taking such whole Estate, nor in any other Place of *Magna Charta*; much less can any such Title be found under Tenures in Free and Common Soccage; for it seems very plain, that as these Grants were first held by Military personal Service, and as no one Man could perform more than what his own Fee required, so the Intent would have been defeated, if Twenty such Fees were vested in one, upon Event of Intestature; therefore Homage and Knight's Service in *Capite*, for the Remainder, was due for each Fee.

*Prærog. Regis in
Primer Seig. 1.
Cap. 3. Fol. 110.
Of which Fees
William the First
granted 60,000
in his Reign,
besides Fee-
Farms.*

Ibid. Fol. 118.

XIII. *Et Civitas London. habeat omnes antiquas Libertates et liberas Consuetudines suas tam per Terras quam per Aquas. Preterea volumus et concedimus, quod omnes alie Civitates, et Burgi, et Ville, et Portus, habeant omnes Libertates et liberas Consuetudines suas.*

XIII. The City of *London* may have all their antient Liberties and free Customs, as well by Land as by Water. We will further and grant, that all other Cities, and Boroughs, and Towns, and Ports, may have all their Liberties and free Customs.

XXXVII. *Si aliquis teneat de nobis per Feodi Firmam, (Fee Farm) vel per Soccagium, vel per Burgagium, et de alio Terram teneat per Servitium Militare, nos non habebimus Custodiam Heredis nec Terre sue, que est de Feodo, alterius Occasione illius Feodi Firme, vel Soccagii, vel Burgagii; nec habebimus Custodiam illius Feodi Firme, vel Soccagii, vel Burgagii,*

XXXVII. If any one should hold of us by Fee-Farm, or by Soccage, or by Burgage, and should hold of another Lands by Military Service, we will not have Custody of the Heir nor his Land, which is of another's Fee, by Reason of such Fee-Farm, Soccage, or Burgage; nor will have Custody of such Fee-Farm, Soccage, or Burgage,

ni ipsa Feodi Firma debeat Servitium Militare.

unless the same Fee-Farm may owe Military Service.

LX. Omnes autem istas Consuetudines predictas et Libertates, quas nos concessimus in Regno nostro tenendas quantum ad nos pertinet erga nostros, omnes de Regno nostro, tam Clerici quam Laici, observent quantum ad se pertinet erga Suos.

LX. All those before-mentioned Customs and Liberties, which we have granted in our Kingdom to be held and kept as much as appertain to us towards ours, all Men belonging to our Kingdom, Clergy as well as Laity, shall observe and keep, as much as appertains to themselves, towards their Tenants.

LXI. Et nos nichil impetrabimus ab aliquo per nos nec per alium, per quod Aliqua istarum Concessionum et Libertatum revocetur vel minuat; et si aliquid tale impetratum fuerit, irritum sit et inane, et nunquam eo utemur per nos nec per alium.

LXI. And we will not demand from any one, either by ourselves or by other, by which any Part of these Concessions and Liberties may be revoked or diminished; and if any such should be obtained, let it be void and of no Force, and we shall never make Use thereof by ourselves or by other.

LXII. Et insuper fecimus eis fieri Litteras Testimoniales Patentes Domini Stephan. Cant. Archiepiscopi, Domini Henrici Dublin. Archiepiscopi, et Episcoporum predictorum, super Securitate ista, et Concessionibus prefatis. Quare volumus et firmiter precipimus quod Anglicana

LXII. And moreover we have caused these Letters Testimoniales to be made Patents of the Lord Stephen, Archbishop of Canterbury, Lord Henry, Archbishop of Dublin, and of the Bishops before mentioned, upon that Security and the Grants before recited. Wherefore we
Ecclesia

Ecclesia libera sit, et quod Homines in Regno nostro habeant et teneant omnes prefatas Libertates, Jura, et Concessionones bene et in pace, libere et quiete, plene et integre, sibi et Heredibus, suis de nobis et Heredibus nostris, in omnibus Rebus et Locis in perpetuum, sicut predictum est.

Juratum est, autem tam ex Parte nostro, quam ex Parte Baronum, quod hæc omnia supra dicta, bona Fide, et sine malo Ingenio, observabuntur; testibus supra dictis et multis aliis. Data per Manum nostram in Prato, quod vocatur Runingmed, inter Windelesorum et Stanes, quinto decimo Die Junii, Anno Regni nostri septimo decimo. Et ne huic Forme predictæ Aliquid possit addi, vel ab eadem Aliquid possit substrahi vel minui, huic scripto Sigilla nostra apposuimus.

(L. S.)

will and firmly command, that the Church of *England* be free, and that all Liege Men in our Kingdom may have and hold all the before-mentioned Liberties, Rights, and Concessions well and in peace, freely and quietly, fully and wholly, to themselves and their Heirs, from us and our Heirs, in all Things and Places for ever, as is before ordained.

But it is sworn, as well on our Part, as on the Part of the Barons, that all these above-recited Articles shall be, with good Faith, and without evil Intention, observed and kept; to which the above-said Lords, Bishops, and many others, are Witnesses. Given under our Hand in the Meadow, which is called *Runingmead*, between *Windsor* and *Staines*, on the 15th Day of *June*, in the 17th Year of our Reign. And lest, unto this before-established Form and Instrument, any Matter may be added, or from the same any Thing be drawn or diminished, we have hereunto put our Seal.

(L. S.)

IN

IN the 16th Section we see, that all the Estate, namely, *Omnia Bona*, of a Freeholder intestate, are to be distributed by Hand of his next of Kin, Friends, and Ecclesiastical Authority, as Justice and Equity may suggest.

SECTION 27. it is mentioned, *Omnia Catalla*, or Chattels, if not *Chastella*, or Castles and Fiefs, to be so distributed, after Payment of Debts; but in the Red Book in *Exchequer*, *Catalla* is not inserted, only *Omnia*, 1 Henry III. and *Omnia Bona et Catalla*, in Section 18. *ejusdem*. However our Practitioners in Law may have defined this Word *Bona et Catalla* for Personal Estate, so as to exclude younger Sons from inheriting any Part of their Patrimonial Lands, yet, it being of mere *French* or *Norman* Extract, signifying a Man's whole Estate, (as it does still, by Common Law, any Thing appendent to Freeholds) which, in those Times, consisted of both Castles and Cattle, (at least among the Nobility) *Bona* implies all Kind of Goods, moveable and immoveable, consequently it may be taken either, first, in the Word Chattels, by a Figure of Speech, a Part for the Whole, or, by *Bona*, Moveables and Immoveables, (as it is still construed in the Civil Law) to mean Lands as well as other Goods; and in all Disputations of this Kind, the Law professes ever to adhere to the most reasonable Side of the Question; and if so, the Decision need not be doubted of.

IT is admitted, by *Littleton* and *Coke*, that all Tenures a Man might hold his Land by in these Times, are reduced to three Denominations, *viz.* Military Service in *Capite*, or Knights Service, either of the King or other Person. Secondly, Free Soccage, which is without yielding any Service, Ward Relief, or Marriage, except a Quit-Rent, called *petit Serjeanty*: And the third Tenure was Base Soccage, otherwise called Villenage, the base Service of which was abolished long before the Statute of

*Articuli Super
Chartas.*

Charta ipsa.

*Ex Libro Rubro
Scaccar. Westmon.
Fol. 234.*

Escheats of
Lands, or other
Profit, are called
Bona Escheantia.
Magna Charta,
Cap. 31. Seg.
Hen. 1. Cap. 11.
and *Bona Caduca,*
Civil Laws, now
Simpliciter
Escheata sed
Escheata cum
Herede de ipsa
Hereditate per
officiales Regis
tam Heres quam
Ceteri Liberi
necessaria
precipiunt. Vide
Gerv. Tilbur.
Lib. 2.
Spelm of Feuds;
also *Termes*
de la Ley, Verbo
Chastells.

See *Shene de*
Significatione
Verbor. Bracton de
Socagio. Anno 37
Hen. VIII. Cap.
20. Somner of
Gavel-kind.
Bracton, Lib. 2.
Num. 7. Cap. 66.

12 Car. II. such being limited to a pecuniary Acknowledgment. All which now being to be construed and adjudged as turned into Common and Free Soccage, the Descents accordingly go as the Common Law of *England* directs; namely, upon Intestature, Free Soccage, under which they were called *liberi Homines*, to all Sons, as Gavel-kind, and in Base Soccage, or Villenage, descending at the Will of the Lord of the Copyhold by Court-Roll, who may admit any Son to the Capital Messuage or Tenement, he dividing the full Value of it with his Brethren. *Bracton, Lib. II. Cap. 35 & 36.*

HENRY the III^d, the Son of King *John*, succeeded his Royal Father *Anno Domini* 1216, when under ten Years of Age, and granted a Charter in the first Year of his Reign, which differs in no essential Instance from that of King *John*, confirming all the Liberties and free Customs of the Realm in the same Words: Also a second Charter in the following Year, to the same Effect, in general *Verbatim*, *Anno* 1217. In the ninth Year of his Reign, *Anno* 1224, a third Charter was granted, published, and declared, without any Difference in Regard to the general Confirmation of our Laws and Liberties, only that in Section 19. the Word *Catalla*, or Chattels, is not inserted, but only *Omnia*, according to the Red Book in the *Exchequer* at *Westminster*. In the same Year also a Charter of the Forest; but, as the Historian says, "*Invitavit paulatim tot Piclavienfium Legiones quod totam fere Angliam repleverunt, quorum Rex agminibus quocunque incesfit.*" He invited over the *Poictovins*, and other *Normans*, who came to the Number of 2000 Knights and Esquires, every where recruiting his Armies with them, to whom he gave Castles and Lands, and the Guardianship of the young Nobility and Gentry, who intermarrying with them, became possessed of their Lands under Military Tenure; upon which the noble Earl of *Pembroke*, and other Barons and Clergy, began to confederate, and make War upon

Matt. Paris,
Page 386.

upon the King, and at last, *Anno* 1234, compelled him to banish these Strangers, and resume his Grants; obtaining this Confirmation of *Magna Charta* of King Henry III. 28 *January, Anno* 1236, and of his Reign 21, as follows.

Carta Confirmationis Regis Henrici III. 28 Die Januarii, Anno 1236, *Anno Regni* 21.

Henricus, Dei Gratia, Rex Anglie, Dominus Hybernie, Dux Normannie et Aquitanie, Comes Andegavie, omnibus Christi Fidelibus, presentam Cartam inspecturis, Salutem.

Henry, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, Earl of Anjou, to all his faithful Christian Subjects, who shall or may look upon this present Charter, Health.

Sciatis quod Intuitu Dei, et pro Salute Anime nostre, et Animarum Antecessorum et Heredum nostrorum, ad Exaltationem Sancte Ecclesie et Emendationem Regni nostri, concessimus, et hac Carta nostra confirmavimus Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Militibus, liberibus Hominibus et omnibus de Regno nostro Anglie, omnes Libertates et liberas Consuetudines, contentas in Cartis nostris, quas eisdem Fidelibus nostris, fieri fecimus cum Minoris essemus Etatis; scilicet, tam in Magna Carta, quam in Carta de Foresta;

Know ye, that by the Inspiration of God, and for our Soul's Health, and of the Souls of our Predecessors and of our Heirs, to the Exaltation of Holy Church and Amendment of our Kingdom, we have granted, and by this our Charter have confirmed, to the Archbishops, Bishops, Abbots, Priors, Counts, Barons, Knights, Freeholders, and to all Men of our Kingdom of England, all Liberties and free Customs, contained in our Charters, which we had caused to be made and done to them our said faithful Subjects, when we

et volumus et precipimus pro nobis et Heredibus nostris, quod prefati Fidelibus nostri, et Successores et Heredes eorum, habeant et teneant in perpetuum, omnes Libertates et liberas Consuetudines, predictas, non obstante eo quod predictae Carte confectae fuerunt cum Minoris aetatis, ut predictum est. His Testibus venerabilis Patribus E. Archiepiscopo, Cant. P. Winton. J. Bathon. R. Dunelm. R. London. W. Carl. W. Exon. R. Sarr. H. Elyen. R. Linc. R. Hereford. A. Covent. et Lichf. Episcopis; W. Valenc. et W. Wygorn. Electis; R. Com. Cornub. et Pictuv. J. Comite Cester. G. Mariscallo, Comite Pembroc. W. Comite de Ferrar. W. Comite Warenn. H. Comite Kanc. H. Comite Essex et Hereford, Simone de Monteforte, Willielmo Lungesp. Willielmo de Ferrar, Willielmo de Vesey, Ricardo de Percy, Richardo de Munfichet, Willielmo de Ros, Johanne Biset, Gilberto de Umframville, Willielmo de Lancaster, Willielmo de Cantilupo, Waltero de Clifford, Johanne Moneme, Radulpho de Mortuomari, Willielmo

were under Age; to say, as well in *Magna Charta*, as in the Charter of the Forests; and we will and command for us, and for our Heirs, that the aforesaid our faithful Subjects, and their Successors and Heirs, may have and hold for ever, all Liberties and free Customs, as aforesaid, notwithstanding that Circumstance that the said Charters were perfected and executed when we were under Age, as is aforesaid. To these Presents are Witnesses, the most reverend Fathers, E. Archbishop of Canterbury, P. of Winchester, J. of Bath, R. of Durham, R. of London, W. Carlisle, W. Exon, R. Sarum, H. Ely, R. Lincoln, R. Hereford, A. Coventry and Litchfield, Bishops; W. Valenc and W. Wygorn Elect; R. Earl of Cornwall and Poictou, J. Earl of Chester, G. Marshall, Earl of Pembroke, W. Earl of Ferrers, William Earl of Warren, Henry Earl of Kenchester, Henry Earl of Essex and Hereford, Simon de Montford, William de Longsword, William de Ferrars, William de Vesey, Richard de Percy, Richard de Mountfichet, Manduit,

Manduit, Rog. la Zuch, Olivero de Vallibus, Gilb. Basset, et aliis.

William de Ros, John Biset, Gilbert D'Umfreville, William of Lancaster, William de Cantilupe, Walter de Clifford, John Monmouth, Randulph de Mortimer, William Manduit, R. la Zouch, Oliver de Valkibus, Gilbert Basset, and others.

Dat per Manus ven. Patris, R. Cycester, Episcopi Cancellarii nostri, apud Westmon. 28 Die Januarii, Anno Regni nostri 21.

Given under the Hand of the venerable Father, R. Bishop of Chichester, our Chancellor, at Westminster, the 28th Day of January, in the 21st Year of our Reign.

THE Charters of the Forests were obtained to curb the Insolence of the Norman Laws, which in William the First or Conqueror's Time ordained the Loss of Eyes (by plucking out) to the Man who took either a Buck or a Boar.

Bampton.

WILLIAM Rufus his Son would hang a Man for taking a Doe, and for a Hare make him pay Twenty Shillings, and for a Rabbit Ten, (a great Sum in those Days.) Henry I. made no Distinction between killing a Man or a Buck; Henry II. made it only Imprisonment for a Time, but his Son Richard I. ordered all those who were convicted of hunting in the Forests to be gelt, or gelded, and have their Eyes plucked out. It is to be hoped that our Gentlemen, Clergy, and Laity, who occasionally take the Pleasure of hunting in any of the Sixty-Nine Forests of England, will take more Care of their Persons, by pleading these Liberties and Free Customs here granted, than they hitherto have done, in the Division of Paternal Lands, among their most unhappy, yet innocent younger Sons; who still continue to be robbed of that Common of Pasture, which

Knights.

which Nature gives to the Beasts of the Forest, as their just Inheritance. And this by *Norman* Feodal Rigour, which all these Charters intended to curb, and, at the same Time, to confirm the Antient Rights of Englishmen, under free and common Soccage Tenures

General Maxims
admitted by
Littleton, Coke,
and others.
Anal. fo. 191.
ibid. 12.

Essay Collater.
Consang. fo. 40.

Ibid fo. 44.

IF in regard to Successions or Disposal of Inheritances, the nearest in Consanguinity to the common Stock or Father, is the true Heir by Descent, (the Males being preferred) upon Failure of these, the Daughters inherit equally, and are considered as one Heir. And if, 2dly, that old and true Maxim in our Law, that none shall inherit any Lands of the first Purchaser as Heir, but only the Blood of the first Purchaser, it surely follows then, that two or more Brothers, being equally the Blood of the first Purchaser, ought to inherit as one Heir, with as much Propriety, as the Daughters are allowed so to do. And for these Reasons; because, in the first Place, for a second Brother to be no Heir of his Father, but only to his elder Brother and his Issue, he loses his original Title, as joint Heir, in Right of Blood of their Common Ancestor, or Father; and (which no Custom can sanctify) is really deprived, of every, even the smallest Chance of succeeding to any Part of his Patrimony; seeing that such collateral Successions (in Calculations) are worth nothing, one Life being as good as another (taken abstractedly from the Birth of each) in the common Course of Nature, and is still worse than Survivorship in general, because it may be barred by the Marriage and Issue, Male or Female, of the first Brother. Secondly, because the following Rule was also engrafted into our Laws formerly, though the Mode seems now to be forgotten, that the first Object of the Common Law is, that Inheritances shall descend to Proximity of Blood in the collateral Descent, as to all Sons as one Heir, and after them to all Daughters as one Heir, which, says the *Grand Coustumier*, was the Law, *L'Heritage*

L'Heritage doit descendre à ce luy, qui est le plus prochain en Lignage à ce luy qui le tient apres sa Mort; c'est à entendre à la Ligne collateral et non pas la Ligne droit, car il ni lui a point de Fin; mais doibuent, Raison de Lignage, être Pers et Parties de l'Heritage que Descent de leur Anceffeurs. “The Inheritance ought to descend to him, who is the nearest in Lineage to the Person last seized, after his Death; that is to say, to the nearest Collateral Line, and not to the Right Line, because it has no End; but ought, by Reason of Lineage, to be Peers and Parties of the Inheritance which descends from their Ancestors.”

*Grand Coutumier
de Normandie cap.
25. de le Escheance.
Gloss. in scripturis
10.*

VI. Wherefore then ought this Canon to confine this Inheritance, which descends from their Ancestors, to Proximity of Blood, *sub Modo*, only, to the Eldest Son solely, and exclude the younger Sons from all and every Part or Share of their Paternal Lands; while it admits the several Daughters to inherit according to the first Rule, as one Heir?

VII. If no Statute or voluntary Decision of a Jury for adopting such a Maxim into a Canon or Rule of Inheritance, nor any reasonable just or constitutional Custom to enforce the same into a Law appears, it must then remain a meer arbitrary Rule, of some antient Lawyers, (not Legislator) either to compliment the Times, or in order to procure their own private Advancement; for as Lord Coke says, *Ubi eadem est Ratio, idem debet esse jus*, “Where the same is Reason, the same ought to be right;” so *è contra*, *Ubi Ratio non est, ibi non potest esse Jus*, “where Reason is not, there can be no Right.”

*Coke on Litteton,
191.*

VIII. If such a general Issue as the foregoing should be tried before any Judges, who may be tenacious of upholding this Canon's arbitrary Doctrine for Law, the Civil Laws allow us to refuse

*Codex 3. 1. 14.
Gloss. ibid.*

refuse them, as being equally liable to what Consanguinity may be objected to in private Concerns, viz. *Possibility of Partiality*.

It is admitted, in all Disputations of this kind, that three Rules are to be considered; whether this Canon can be supported by either, *Verba Legis*, *Ratio Legis*, or *Mens Legislatoris*, "The Words of the Law, the Reason of the Law, or the Intention of the Legislator." As to the First, not one single Act of the Legislature by Writing can be produced for the literal Authority; to the Second, every political and human Reason makes against it; and, lastly, the Intention of the Lawgiver cannot be alledged upon an Intestature, without any previous Deed, or Settlement of the Ancestor, who is the sole Legislator, and not existing. By the Tenderneſs of the Civil Law, one Brother who is deformed of his Lands by his Elder, is not obliged to wage his Law to recover the ſame, on account of Privy of Blood, no more than he was obliged to wage Battle againſt him formerly (when Duels were the Decisions of ſuch Diſputes at Law); but is *ſtatim et ſine Dilatione*, inſtantly and without Delay or Subterfuge, by Judgement of his Equals (ſummoned on the Spot where the Lands lye) to be reſtored to his Rights, without perplexed Arguments, which rather ſuit Mercenary Traders, in Pleadings, than ſerve to investigate the real Truth: Let us proceed to conſider how Succeſſions ought to ſtand with us, under that happy Conſtitution which never has been invaded, or in any wiſe obſtructed by, or under the preſent moſt benign and excellent regal Adminiſtration that any Age can truly boaſt of; in caſe Acts of Parliaments have altered our fundamental Liberties here exhibited, we ſhall ſubmit to them as the true Criterion whereon we hold our Liberties, Properties and Lives; but the only ſubſiſting Reaſon now alledged for the unwarrantable Uſurpation which Primogeniture aſſumes over all its Brethren,

Suarez de Legibus, lib. 6. cap. 1.

Puffend. de Off. Stat. Weſtm.

3 Edw. 1.

Blackſton, Jura Conſang.

*Ritterbuſen
Hermannus Burg-
meiſter.
Principia de Jure
32. Tabularum.
Hernick. Edit.
perpet. Ritter.
Codex Theodoſ.
Principles of
Equity,
printed at Edin-
burgh 1760.*

is truly to keep up Dignities, and to prevent splitting Estates. This may be held as confuted on its own Principles, by the many learned Authors (quoted in the Margin) who have written upon the Subject of Civil Policy; and Examples among the wisest Commonwealths shew, that Children are the Pupils of the State, and “*Interest Reipublicæ, ut quilibet re suâ Bene utatur,*” Estates ought to be settled as best answers the public Good: This cannot be by making one Son rich, lazy, ignorant, and luxurious, and the rest a Burthen to their Country, without Lands instead of Means to try their Industry upon. It is very extraordinary that the general Liberties and Rights still preserved to the County of *Kent*, the Province of *York*, Part of *Gloucestershire*, and other Parts, whose Inhabitants have reason to glory in maintaining by constantly pleading *Magna Charta* for Subsistence of all Sons, should be lost or forfeited in all other Cities, Towns, Ports, and Places, of the Kingdom, since all have the very same original Title, namely, *Magna Charta*, to plead under. Certainly, and without Doubt, the Sufferer by this pretended Canon has as much Right to demand Satisfaction and Assistance from all his Fellow-Subjects, to obtain Justice, as those have who are disseized of their Lands and lawful Possessions. For in the *East* and *West Indies*, or *America*, doth not the Government immediately send the Possé of the State to procure full Amends, provided Negotiation hath no Effect? Witness *Jenkins* his Ear in the former War, Limits in the late, and the Cutting of Logwood in the Bay of *Honduras* since the last Peace: So this Subject, if neglected or over-ruled, will never be given up, but unless publickly amended, the Sufferance must remain an indelible Stain on the Justice of this Age and Kingdom.

See Blackston's
Anal. of Coke's
Canon.

Locke, Puffen-
dorff, Grotius,
Heinsius, Keate,
Hume, &c.

SIR *Edward Coke*, when he laid down Rules for his Brethren in the Law, was candid enough to acknowledge he had not recurred to the preceding Times, much less to the Fountain-

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Head

Head of our present Constitutional Laws, namely, the *Merchen-Law*, the *Dane Law*, and the *West-Sex Law*, collected by *Edward the Confessor* (and which went under his Name ever after in *Magna Charta*). These he calls dark and fabulous Ages; whereas it is so far the Contrary, that *English Liberty* appeared so well established under those very Laws, as to be esteemed a sufficient Palladium to be confirmed by the subsequent Charters, which they both fought for, and often purchased from their tyrannical Military Monarchs, to the Times in which he wrote. Master *Littleton* was more modest, for he did not pretend to obtrude any Doctrinal Points, but only to recommend a more minute Examination into the true Foundation of the Common Law. The former, it is true, plann'd the first Road for the profitable Practice of the Law, by laying more Stress upon Forms and Niceties in Pleadings than Justice itself, and could turn, wind, and twist a Case as would best suit his own Purpose. This might perhaps raise Veneration to his Memory, as the Silver Shrines of *Diana* did to the *Ephefian*, or the Scarlet Whore to the Popish Clergy; but we find his Abilities and Integrity greatly questioned, and delivered down to us much condemned in the Trials of the Murderers, and Case, of *Sir Thomas Overbury* in *James the First's* Reign; and also by *Sir Matthew Hale* in *Charles the Second's*, for the Grants he obtained, illegally, when Chief Justice. Perhaps it suited the Principles of those Reigns for the Lawyers to court Prerogative, and follow the Maxims of *Dr. Fullbeck*, Cap. X. Page 69. or of *Blackwood*, which are, "That, by the reason of the Conquest of *William the First*, we are all Slaves;" whereas, History tells us, that before he was crowned, those excellent and famous Laws of *Edward the Confessor* were tendered to him, and the Question put, Whether he would govern by those Laws? to which the Duke of *Normandy* replied, he would. The Archbishop of *York* then asked the *English* Lords and Commons, who were present, if they would assent to have the Duke to be their

*Littleton ad
Finem.*

their King? and if he should then be crowned? To which they all with unanimous Consent answered, Yea, Yea; upon which he took the Coronation Oath, "That he would not pretend to have any absolute or despotic Power over the Lives, Liberties, or Estates of the *English*, nor violate, break, or alter the fundamental Rights of the Kingdom, and said further, I do here solemnly swear and promise, in the Presence of Almighty God, inviolably to observe and keep sacred the Laws of Saint *Edward*, my Kinsman."

Now let the Reader judge, if he was not confirmed in the Crown, rather by mutual Agreement, and solemn Compact, than by the pretended Title of Conquest? for although he, and many of his Successors, broke through this Covenant, yet it doth not vacate the Contract at all, more especially as it hath since been fully re-established and confirmed by *Magna Charta*.

WE must now Address to the Minds of our Readers a Transaction which happened at this Time, in order for the final Establishment of these Liberties to us for ever, which is a solemn League, Covenant, or Convention entered into between the King, the Lords Spiritual and Temporal, and Commons assembled in *Westminster-Hall*, on the 13th Day of *May*, 1253, mutually to stand by and protect each other in the Preservation of those Laws, Rights, Liberties, and Franchises; and as there never was before exhibited so deliberate, so public, and so valid an Act, as well to Mankind in general, as to this Nation in particular; a *Pacta Conventa*, sworn to by King, Spiritual and Temporal Lords, and Commons, under as sacred a sacramental Test as the Mind of Man could invent to impress the same on the Minds of all Posterity, we shall beg Leave to give a literal Translation thereof.

Anno 1253.

Sententia Excommunicationis,
lata in Transgressores Carta-
rum, Regis Henrici III. 13
Die Maiæ, MCCLIII. Anno
Regni XXXVII.

*Sentence of Excommunication,
published against the Trans-
gressors of Magna Charta of
King Henry III. on the 13th
of May, 1253, and of his
Reign the 37th.*

Anno Domini MCCLIII. III
Idus Maii, in Magnâ Aulâ Re-
gis apud West. sub Presentiâ et
Assensu Domini Henrici, Dei
Gratiâ, illustris Regis Angliæ, et
Dominorum, R. Comitis Cornub.;
Fratris sui R. Comitis Norfolk et
Suffolk, Mareſcall Angliæ; H.
Comitis Hereford; H. Comitis
Oxon.; J. Comitis War. et ali-
orum Optimatum Regni Angliæ.
Nos B. divina Miseratione, Cant.
Archiepiscopus, totius Angliæ
Primas; F. London, H. Elyens,
R. Lincoln, W. Wygorn, W. Nor-
wich, P. Hereford, W. Sar. W.
Dunholm, R. Exon, S. Carl. W.
Bathon, L. Roffens, Thom. Mene-
vens, Episcopi, Pontificalibus in-
duti, Candelis accensis, in Trans-
gressores Libertatum Ecclesiastica-
rum et Libertatum seu Liberarum
Consuetudinum Regni Angliæ, et
precipue earum que continentur
in Carta communium Libertatum

In the Year of our Lord
1253, III Ides of May, in the
Great Hall of the King at West-
minster, in the Presence, and
with the Consent of our Sove-
reign Lord Henry, by the Grace
of God, illustrious King of
England, and of the Lords, R.
Earl of Cornwall; his Brother
R. Earl of Norfolk and Suffolk,
Marſhal of England; H. Earl
of Hereford; H. Earl of Oxford;
J. Earl of Warren; and of
other Grandees of the Kingdom
of England. We B. by divine
Mercy, Archbishop of Canter-
bury, Primate of all England,
F. London, H. Ely, R. Lincoln,
W. Worcester, W. Norwich, P.
Hereford, W. Sarum, W. Dur-
ham, R. Exon, S. Carlisle, W.
Bath, L. Rochester, Thomas
Menevens, Bishops, cloathed in
our Priestly Vestments, with
Candles burning, against the
Regni,

Regni, et Carta de Foresta, excommunicationis Sententiam, solemniter tulimus sub hac Forma. Auctoritate Dei Patris omnipotentis, et Patris, et Filii, et Spiritus sancti, excommunicamus, anatimizimus, et a liminibus sancte Ecclesie sequestramus, omnes illos qui a modo scienter et malitiose Libertates vel antiquas Regni Consuetudines approbatas spoliaverint suo Jure, precipue Libertates et liberas Consuetudinesque, in Cartis communium Libertatum et de Foresta continentur, concessis a Domino Rege Archiepiscopis, Episcopis, et ceteris Anglie Prelatis, Comitibus, Baronibus, Militibus et libere Tenentibus, quacunque Arte vel Ingenio violaverint, infregerint, diminuerint, seu immutaverint, Clam vel Palam, facto, Verbo vel Concilio, contra illas vel earum aliquem in quocunque Articulo temere veniendo.

Transgressors of the Ecclesiastical Liberties, and the Liberties or free Customs of the Kingdom of England, and especially of those which are contained in the Charter of the common Liberties of the Realm, and in the Charter of the Forest, we have solemnly passed Sentence of Excommunication in this Form. By the Authority of Almighty God, the Father, Son, and Holy Ghost, we excommunicate, we anathematize, and sequester from the Benefits of the Holy Church, all those who in any wise, wilfully, knowingly and maliciously shall spoil the Liberties or ancient and approved Customs of the Kingdom, especially the Liberties and Free Customs, contained in the Charters of our Common Liberties, and of the Forest, granted from our Lord the King, to the Archbishops, Bishops, and to the other Prelates, Counts, Barons, Knights and Freeholders of *England*, or who by any Art or Device whatsoever, shall violate, infringe, diminish or change, either by Counsel against those, or any Matter appertaining to them, or

In.

in any wise rashly come to offend against the same in any Article thereof whatsoever.

In cujus rei Memoriam sempiternam nos Signa nostra Duximus apponenda.

L. S.

In everlasting Memory of which Act and Deed, we have caused our Seals to be hereunto affixed.

L. S.

Fol. 3.

Noverint universi, quod Dominus Henricus, Rex Anglie, illustres R. Comes Norff. et Mareſcallis Anglie, H. Comes Hereford et Essex, J. Comes de Warrewic, Petrus de Sabaud, ceterique magnates Anglie, consenserunt in Sententiam Excommunicationis generaliter latam apud Westmon. tertio decimo Die Maii, Anno Regni Regis predicti XXXVII. in hac Formâ; scilicet, Quod vinculo prefate Sententie ligentur omnes venientes contra Libertates contentas in Cartis communium Libertatum Anglie. In cujus rei Memoriam, et in Posterum veritatis Testimonium, tam Dominus Rex, quam predicti Comites, ad Instantium aliorum Magnatum et Populi, presenti scripto Sigilla sua apposuerunt.

L. S.

Know all Men, that our Lord Henry, King of England, the illustrious Earl of Norfolk, Marshal of England, Henry Earl of Hereford and Essex, J. Earl of Warwick, Peter de Savoy, and the rest of the Grandees of England, consent to the Sentence of Excommunication in general, published at Westminster on the 13th of May, in the 37th Year of the Reign of our aforesaid Sovereign Lord the King, in this Form; to wit, That all Persons shall incur the Penalties of this Sentence, who attempt or act any Thing against the Liberties contained in the Charters of the common Liberties of England. In Testimony of which Fact, and to transmit the same to Posterity for ever, our said Sovereign Lord the King,

as

as well as the Earls aforesaid, at the Instance of all the other Grandees and People, have affixed to this Writing their Seals.

L. S.

IN this Reign *Isabella* Countess of *Arundell* demanded Justice of the King in Person upon losing her Lands, upon a meer adopted Point of Law concerning Escheats, which was annulled thereupon in this Charter. It may not be amiss here to remark how seldom the Word Parliament appears until the Confirmation of *Magna Charta*, but is expressed only, *Commune Concilium Baronum meorum*, (as it is in the Roll) the Common Council of my Barons, at the Parliament which met at *Winchester* in King *John's* Reign; so from the Conquest to near the End of *Henry* the Third's Reign, (when the Writs of Summons for Knights, Citizens and Burgeses, &c. to be elected to sit in Parliament were first issued) the Prelates and Barons alone (or Barons Spiritual and Temporal) were termed the Parliament or Common Council of the Nation, and this King held such Parliaments at *London*, *Westminster*, *Merton*, *Winchester* and *Marlborough*, the Statutes whereof are still in Force. Which proves that Commoners had then little or no Share in protecting the Rights of Inheritance among us, nor were accounted of any great Consequence, until even after Queen *Elizabeth's* Reign, and *James* the First, who used to catechise them sometimes in very lofty Terms; and if they pretended to meddle with her Prerogative, Affairs of State, forsooth, were smartly told to mind their own Business; so little did the Court, in those Days, observe the Tenour of the Writ whereby Commoners were summoned, *Ad faciendum et consentiendum de Arduis Regni negotiis*, to do and consent about the difficult Affairs of the Kingdom: And Sir *Edward Coke* maintains, that even the Bishops had no Voice in Parliament, because the Word, *faciendum*, to do, was left out of their

Rot. Parl. *John's*.
Winchestr.

Statuti corunda.

V. de Writ ad
Elect.

As appears in a
Manuscript Re-
cord, MSS.

By 12 Car. II.

their Writs, and the Word *consentiendum* only, to consent, inserted therein : By such a Position as this, it was that until *Henry the Third's Time*, when the Commons were first called to Parliament (which was by the Bishops Advice, in order to counterbalance the Power of the Barons) the latter were the only Parliament in *England*, as fully appears by the Tenour of the Great Charters, obtained by them, first to secure their own Inheritances from Military Law, which Cause (*Causa sublata, affectus tollitur*) being removed, those Effects must now consequently be taken away. And whatever Preference Primogeniture might claim, in order to maintain a Baron's Title and Dignity, yet no Infringement on the Liberty and free Customs among free and common Soccage Tenants was ever allowed by *Magna Charta*, but on the contrary are in every Part thereof fully, explicitly, and most solemnly confirmed to us. The Ceremonial made use of on this Occasion was as solemn as was ever observed in the Annals of any other Nation either before or since, that it might make the deeper Impression to the latest Posterity ; the King, Nobility and Prelates, all cloathed in their proper Ornaments, with burning Candles in their Hands, attended to hear this terrible Sentence of Excommunication pronounced against the Infringers of the same. And at the lighting of those Candles, the King having received one into his Hand, gives it to the Prelate that stood by, saying, *It becomes not me, being no Priest, to hold the Candle ; my Heart shall be a greater Testimony ;* and thereupon spread his Hands upon his Breast all the Time the Sentence was reading : After which, the Archbishops, Bishops, and the rest of the Clergy, throwing their Candles on the Ground, which lying there smoaking, they cried out, *So let them who incur this Sentence be extinguished and sink in Hell.* To which the King, with a loud Voice said, *As God me help, I will, as I am a Man, a Christian, a Knight, and a King crowned and anointed, inviolably observe all these Things.* Certainly, never were Human Laws confirmed in any Nation,

Nation, before or since, by a more deliberate and sacred Tye; nor yet can we find a Period in our History so well adapted for rectifying any Infringement thereof, than the present, when under a most religious and gracious King, his honourable Courts entertain no Rivalship, unless it be, which shall, with the greatest Precision and impartial Justice, administer the Laws agreeable to our most excellent Constitution. And yet *Tresilian*, with his Brethren, in *Richard* the Second's Reign, gave under their Hands and Seals, their Opinions, that the whole Parliament were Traytors, and the very Constitution was Treason, and that the King was above Law. For which *Tresilian* was executed at *Tyburn*, and the rest of the Judges outlawed, and their Estates confiscated, so soon as the Asserters of our Constitution got the better, in that Parliament which was called the Wonder-working Parliament, *Anno* 1388. *Empson* and *Dudley*, Lawyers in *Henry* the Seventh's Reign, were also executed for their Breach of the Constitution in the next. Notwithstanding which, Cardinal *Wolsey* attempted afterwards to break through *Magna Charta* again, by granting Commissions under the King's Great Seal to raise 4 s. in the Pound upon every Man's Estate above 50 l. Value. But when the People bravely refused it, as against the Fundamental Rights of *Magna Charta*, *Henry* the Eighth disowned it; and to salve all, declares he will never attempt the like any more, (excepting by due Course of Parliament) though by his Extravagancies his Wants were become very great. Shall a *Coke* then, or any other Man, pass their Opinions as the Law of the Land, to disinherit all the Younger Sons in *Great-Britain*, and thereby discharge them from the surest Bond of their Allegiance, their Natural Inheritance? We know of no such Authorities in Opposition to Fundamental Rights: The Judges are *Quasi* Marshals of Law Process, but the whole Legislative Body of the Kingdom form the true and rightful Legislators and Expositors of the Common Law of *England*,

Reg. Hen VIII.

land, and delegates accordingly a Jury of good and lawful Men to try an Issue, *Secundum Legem Terræ*. These Examples of former Delinquents, however, happily ended in the Person of Judge *Jeffries*, *Regno Jacobi II. Anno 1688*. Whatever Stress has been heretofore laid on the Argument, That under the *Jewish* Dispensation of a Theocracy, the Eldest Male was preferred, by having a double Portion of Inheritance; yet if we recur to the Original Text, there will be found such Proofs in favour of Partition, as will make the Advocates for Primogeniture's assumed Privilege of sole Succession, wish they had never quoted it.

And in *Genesis*,
whatever
Birth-right
Cain had, he
not only forfeited by Murder, but his
whole Race
also perished
by the Deluge.

Deuteron. 16,
16, 17.

In the first Place, In order to ascertain what that double Portion for the Eldest was; the whole Patrimony must be first divided into so many Shares, as will exceed, by one, the Number of Children: For Instance, six Children must have seven Portions, of which the Eldest having two, proves Equality among the other five Children beyond Contradiction, and that the Inheritance must also be divided. In the second Place, To prove that neither Honour nor Profit was intended for the Eldest Male, by this Mode of Inheritance; he was to be redeemed at the full Value of a Child's Portion, and after paying it accordingly to the Priest, the Portion became then but equal with the others; for, says the Text, "Every Firstling of an Ass, shalt thou redeem with a Lamb;" and if the Owner did not think fit to redeem it, "thou shalt break his neck." Wherefore it is plain, that the Ceremony was designed only as a Commemoration Sacrifice of their Escape from *Egypt*, &c. Indeed, under Military Sway, when the longest Sword carried the Cause, (namely, until *Magna Charta* was firmly established under our present excellent Constitution) no Wonder if some Sons of *Belial* were found to pervert Justice, and deprive *Naboth* of his Vineyard, the Inheritance of his Father's. The Doctrine of *Coke* displays so high a Genius, as making

Exod. 13. and
Veric 13.

Mensura Juris
Vu Erat.

making his Descents obedient to the Laws of Gravitation, and (tho' ridiculous to every intelligent Student at first Sight) consists in annihilating the natural Birthright of younger Children for ever : In the genuine Case now before us, the Scripture Account of the Prophet *Nathan's* Parable may not be unapt. He applied to *David* in these Words : " There were two Men in one City, the one " rich and the other poor ; the rich Man, (*quasi*, the eldest Son) " had exceeding many Flocks and Herds (*id est*, two-thirds of a " very large Estate secured to him by Intail or Settlement) but " the Poor Man (*i. e.* the younger) claimed nothing, save one " little Ewe Lamb, *viz.* (one Moiety of the remaining undevise " Third, as his single Right of Birth from the same Parents) for " himself and his Children : The rich Man, however, not satisfied " with his own superior Wealth, took from the poor Man the " Ewe Lamb, even all that he had, and applied it to his own " Use (without any Judgement before had, or obtained, but under " the sole Operation of a fictitious Canon.)" May we not reply with *David* from the same Impulse of Conscience, " As the Lord " liveth, the Man that hath done this Thing shall surely die ; " and he shall restore the Lamb four-fold, because he has done " this Thing, and had no Pity ? And *Nathan* said unto *David*, " Thou art the Man." That is, this pretended Canon of Inheritance hath done the same Thing in the Case here exhibited, contrary to the Commandments of the Lord ; and although hitherto done secretly (that is, under the specious Appearance of Law) is now exposed to the Sight of all *Israel*, as a Cheat and an Imposture.

2d Book of
Samuel, Chap.
12. Verse 1. et
seq.

THE Prophet proceeds further to threaten, That, because of this notorious Abuse of every Human and Divine Law, the Sword shall never depart from thy House : And so hath this adopted Son of *Baal* been the primary Cause of Feuds and dire Animosities between Brethren, in all the Landed Families in these

Realms. Thus the first Principles of True Policy (namely, Integrity) being thrown aside, nothing ensues but Perplexity, Confusion and Error, which are the genuine Offspring of this Pseudo-Canon; whereas our Laws ordain admirable Truth and Justice to be distributed, even *gratis*, to all Men, by what follows, *viz.* Henry the III^d, in the 49th Year of his Reign, gave a further Confirmation of the Charters, *Teste se ipso, apud Westmon. 14 Die Martii, Anno Regni 49*, and in the 52^d Year of his Reign, 18th November, *Anno Dom. 1257*. The Statute of Marlberge enacts:

Capitulum Quintum.

Magna Charta in singulis suis Articulis teneatur tam in his quæ ad Regem pertinent, quam ad alios; et hoc coram Justiciariis Itinerantibus in suis Itineribus, et Vice Comitibus in Comitibus suis, cum opus fuerit Demandetur et Brevia versus eos qui contravenerint gratis concedantur coram Rege, vel coram Justiciariis Banco, vel Coram Justiciariis Itinerantibus, cum in Partes illas venerint. Similiter Charta de Foresta in singulis suis Articulis, teneatur; et Contravenientes per Dominum Regem, cum Convicti fuerint graviter puniantur Modo supra dicto.

Chapter the Fifth.

Magna Charta shall be observed and held in all and every Article thereof, as well in those which appertain unto the King, as those which respect others; and this shall be demanded whenever need be, before our Justices in Eyre, while on their Circuits, and of our Viscounts in their several Counties, and Writs against those who may contravene shall be granted *gratis* before the King, or before his Justices in Eyre, when they shall come into those Parts. In like Manner the Charter of the Forest shall be kept in every and singular Article thereof; and the Contravenors, upon Conviction thereof before our Lord the King, shall be grievously punished after the Manner abovesaid.

HENRY

HENRY the Third dying, to him succeeded, *Anno* 1272, his valiant Son *Edward* the First, at that Time making War upon the Saracens in the Holy Land; from whence departing, and passing through *Italy* and *France*, arrived in *England* in the Third Year of his Reign; where, on the 19th Day of *August*, 1274, he was, with his Queen *Eleanor*, the faithful Associate in all his Dangers (she having sucked out the Poison from a Wound he received by an Arrow in *Palestine*) solemnly crowned at *Westminster*, by *Robert Kilwarby*, Archbishop of *Canterbury*. Next Year he began with his Business in Parliament, when the First Statute of *Westminster* passed; 3d *Ed. I. Cap. 24.* enacts, “ That no Escheator, Sheriff or Bailiff of the King, by Colour of his Office, shall, “ without Special Warrant or Authority, disseize any Man of his “ Freehold: And if any do, it shall be at the Election of the “ Disseizee, whether the King by Office shall cause it to be “ amended, or he will sue by Writ of Novel Disseisin: And he “ that is attainted (or found guilty thereof) shall pay double Costs, “ and be grievously amerced.”

1 Stat. Westm.
3 Edw. I. Cap.
24.
See Charter of
Hen. I. in Fol. 6.

THIS secures the Subject in his lawful Patrimony and landed Inheritance, from all pretended Titles which any might claim under Crown Prerogative, or otherwise, to succeed in those Lands which appertained either in Part or wholly to other Persons. *Ibid. Cap. 43.* All Parceners are considered as one Feoffee, and have but one Effoin. The Second Statute of *Westminster*, 13 *Edw. I. Cap. 2. Sect. 3. et vide Sect. 5.* enacts, that “ when an Advowson descendeth “ unto Parceners, though one Parcener present twice, yet he that “ was negligent, shall not be barred, but another Time shall have “ his Turn to present, and the former Presentment however stands “ good as to the Incumbent. *Ergo*, Several Parceners may be one “ Heir, having but one Effoin.” *Ibid. 13 Edw. I. Cap. 46.* No Usurpation of Common Right gains a Title thereto. Statute of *Wallia*, 12 *Edw. I. Sect. 88.* *Ergo*, No Eldest Son's Title can be

Stat. Westm.
13 Edw. II.
Cap. 5. Sect. 3.
5. et seq.

Error, Tempore
non Convalecit.

See 3d Canon
of Inherit.
Blackstone.

See Prynn,
Records at
large, and Tower
Records.

be good without Formedon or Gift. Inheritance shall remain partible among Heirs Males, as hath been accustomed, but Bastards shall have no Part. This clearly ordains who are to be disinherited; but our famous Canon supercedes all Statutes, and ranks every younger Son in *England*, as equally uninheritable (with Bastards) to their immediate Parent's Freehold and Common Soccage Lands. Judge *Dodderidge*, in his Treatise of Nobility, Page 119. holds, that Soccage Lands, even when Feodal Military Tenures took place, were always partible among the Males. In this King's Reign the famous Contest happened between three Candidates for the Crown of *Scotland*, *John Baliol*, *Robert Bruce*, and *John Hastings*. The first claimed, as sole Heir, and upon the Plea, that Kingdoms were impartible in their Nature: It was so adjudged. *Robert Bruce* claimed Partition of Lands, as did *John Hastings*; and insisted, That such was the common Law of both Kingdoms, and demanded Judgment according thereto; which Plea was admitted as to private Inheritances, but not as to Lands annexed to a Crown, the King sitting as Judge, with 120 *English* and *Scots* Nobility, at *Norham*, near the Borders of that Kingdom, after a Debate which lasted two Years. This is the only Instance which can be found during a Period of 700 Years, how Primogeniture was allowed a sole Succession, viz. because a Kingdom was undividable in its Nature, and therefore no partible Inheritance.

2d Stat. *Westm.* } Gives the Canon of Descents, or *Formedon de*
13 *Edw. I. Cap. 2.* } Descender in these Words: 1st. *Quod C. dedit*
Seet. 3. } *tali Viri, et tali Mulieri, et Heredibus, de ipsi*
Viro et Mulieri exeuntibus. That C. gave to such a Man, and to
such a Woman, and to the Heirs of that Man or that Woman,
lawfully begotten. Or thus:

Secundo, Quod C. dedit tali Secondly, That C. hath given
Viro in liberum Maritadium cum to such a Man, in Frank Mar-
tal:

tali Mulieri, et post Mortem prædicti Viri et Mulieris, prædicto B. Filio eorundam Viri et Mulieris descendere debeat, per Formam Donationis prædictæ.

riage with such a Woman, and after the Death of the said Man and Woman, to descend to the aforefaid B. the Son, according to the Form of the Donation aforefaid. Or thus :

Tertio, Quod C. dedit tali et Heredibus de Corpore suo exeuntibus et quod post Mortem, illum talis prædicto B. Filio, descendere debeat, per Formam Donationis, ut dicit, &c.

Thirdly, That C. hath given to such a one, and to the Heirs of his Body lawfully issuing ; and that after the Death of such a one, to descend to the aforefaid B. by the Form of the Gift, which says, &c.

HERE is no Limitation to one Son more than another, but all depends on the *Formedon* or *Mens Legislatoris*, the Form of the Gift or Will of the Donor or Devisor, Ancestor or Purchaser, here referred unto ; and in Default thereof, *Magna Charta* supplies the Place, and distributes equal Justice to all Freeborn Subjects, as the Common Law of *England*, 3d, 4th and 5th, and 9th, 29th, and 38th Chapters.

Ibid. Cap. 3. } Says, that “ No Heirs can be barred by a Fine levied
Sect. 4. } “ by any one in Possession, or who is seized of the
“ said Lands, &c.”

Confirmatio Cartarum Regis Edwardi I. V. Die Novembris MCCXCVII. Anno Regni XXV.

Confirmation of the Charters of King Edward I. on the 5th. Day of Nov. MCCXCVII. and of his Reign XXV.

Edward, par le Grace de Dieu, Roy d'Engleterre, Seigneur d'Ir-

Edward, by the Grace of God, King of England, Lord of
lande,

lande, Duc d'Acquitanie: Atoutz ceux qui cestes presentes Lettres verront ou ourront, Saluz. Sachiez, nous al Honeur de Dieu, et de Sainte Eglise, et au Profist de tous nostre Royaume, avoir graunte pur nous, et pur nos Heyrs, kela Graunte Chartre de Franchises, et la Chartre de la Foreste, le quelques furent faites par commun Assent de tout le Royaume, en le Tems le Roi Henri, nostre Pere, soient Ternues en tous leur Points, sans nul Blemissement. Et volumes, que mesmes celes Chartres de souz nostre Seal soient enviez a noz Justices, aussi bien de la Forest, cume au autres, e a touz les Viscountes des Counteez, e a toutz nos autres Ministres, e a toutes nos Cyteez par my la Terre, ensemblement, ove nos Briefs, en les quieux serra countenu kil facent les avaunt dites Chartres publier; e ke il facent dire aus Peuple, ke nos les avons grauntees de tenir les en toutz leur Pointz. E a nos Justices, Viscountes, e Maires, e autres Ministres, qui la Loy de la Terre desoutz nous et par nous oient, a guier meismes les Chartres en toutz leur Pointz, en Plea eaux, e en Jugementz les

of Ireland, and Duke of Acquitain: To all to whom these Letters shall come or be had, Health. Know ye, that we, to the Honour of God, and the Holy Church, and to the Profit of all our Kingdom, have granted for us, and for our Heirs, that the Great Charter of Liberties, and the Charter of the Forest, which were made by the common Assent of the whole Kingdom, in the Time of King Henry, our Royal Father, be kept in all their Articles, without the least Blemish or Abatement. And we will, that those the said Charters under our Seal be sent unto our Justices, as well that of the Forest, as the others, and to the Viscounts of the Counties, and to all our other Ministers, and to all our Cities throughout the Land, in like Manner, to have our Briefs or Letters, in which will be contained, that they shall cause the beforesaid Charters to be published; and that they shall acquaint the People, that we have granted them to hold them in all their Points. And to our

faceur

facent alower ; cest a savoir, la Graunt Chartre de Franchises, cume Loy Commune, e la Chartre de la Forest, selonc l'Affize de la Forest, al Amendement de nos Peuple. E volums, ke si nul Jugementz soient donnez desormes en Countre les Pointz des Chartres avaunt dites, par Justices, et par nos autres Ministres, qui, countre les Pointz des Chartres, tienent Pledz devaunt, eaus soient defez, et pur nient tenuz. E voloms, ke meismes celes Chartres, desoutz notre Seal, soient enviez a Eglises Catbedrales, par mi notre Roiaume, et la demergerent e soient deus fiez, par un lues devaunt le Poeples. E ke Archevesques, Evesques, doingnent Sentences du graunt l'Escumenque contre touz ceaux, qui contre les avaunt dites Chartres vendront, ou en fait, ou en ayd, ou en consal, ou nul Point en freindrent, ou encountre rendront. E ke celes Sentences soient denunciez e puplicher deux Foiz par An, par les avant ditz Prelats. E si meismes les Prelas, Evesques, ou nul deux, soient negligentz a la Demunciacion, sus dite faire par les Archevesques de Caunterbury,

And to our Justices, Viscounts, and Mayors, and other Ministers, which the Law of the Land, under us, and by us, have been appointed, to observe the same Charters in all their Points in Pleadings, and cause them to be allowed in Judgments ; that is to say, the Great Charter of Liberties, as Common Law, and the Charter of the Forest, according to the Assize of the Forest, for the Relief of our People. And we will, that if any Judgments should be given afterwards in Defiance of the Points of the Charters aforesaid, by our Justices, and by our other Ministers, who, contrary to the Points of the Charters, do hold Pleas before them, the same shall be defeated, and held for nought. And we will, that these the same Charters, under our Seal, be sent to the Cathedral Churches, throughout our Kingdom, and be there publickly shewn forth, and be read twice in the Year before the People. And the Archbishops and Bishops do pronounce Sen-

K e de

*e de Yverwyk, qui pur Tems ser-
rount, si cume, conyant soient re-
pris e distreinz, a meismes cele
Denunciaciun fere, en la Fourme
avaunt dite. En Tesmoignance de
de quieux Choses, nous avaunt fait
faire cestes nos Lettres overttes.
Donnes a Gaunt, le quint Jour
de Novembre, l'An de notre Regne
vintisme-quint.*

tences of Excommunication a-
gainst all those, who contrary to
the beforesaid Charters shall
come, aid, assist, or counsel in
any Point whatever, or that shall
infringe or oppose the same.
And that these Sentences be de-
nounced and published twice in
the Year by the aforesaid Pre-
lates. And if even the said
Prelates, Bishops, or any of
them, should be negligent in
the said Proclamation to be
made by the Archbishops of
Canterbury and *York* for the
Time being, they shall, on Con-
viction, be suspended, until this
said Proclamation or Denuncia-
tion be made, in the Form and
Manner aforeaid. In witness
whereof, we have caused these
our Letters to be made Patent.
Given at our Court in *Gbendt*, the
5th Day of *November*, in the
25th Year of our Reign; *Anno*
1297.

7 R. II. cap. 6.
12 Hen. VIII.
cap. 12.
3 Ed. I. cap. 19.
13 ibid. cap. 7.
27 ibid. cap. 13.
29 Car. II. c. 7.
4 & 5 W. & M.
cap. 8.

THESE several Statutes confirm the *Saxon* Laws ; wherein, for
the better securing the Rights and Properties of all Men, every
Tithing was answerable for every Act committed therein against
the Peace of our Sovereign Lord the King, his Crown, or Dig-
nity, under Frank Pledge of Body for Body, and still subsists by
Hue

Hue and Cry, in the Hundreds and Counties throughout *England*, against Robbery, Murder, Felony, Rebellion, or any other Breach of Common Law : This demonstrates, that the whole Community is bound in a solemn Compact for our mutual Defence and Security, and by the Sacramental Oaths of *Magna Charta*, to stand by each other, pursue, and bring to condign Punishment, every Invasion of the Rights of the Subject. Can there be then in Nature so great a Crime as the Mode, which takes away the lawful and original Birthright of Orphans ? A Breach of Covenant, let all Men look to, as they shall value their solemn Oaths !

Articuli super Chartas Regis
Edwardi Primi, 6 Die Mar-
tii, 1299, Anno Regni
XXVIII.

*Pur ceo que le Pointz de la
Grant Chartre des Fraunchises et
la Chartre de la Forest, les quieus
le Roy Henri, Pere le Roy, qe ore
est granta a soen People, pur le
Pru de soen Roiaume, ne unt pas
este tenuz ne garde avant ces
Heures, pur ceo qe Peyne ne fust
avant establee en les Trepassours
contre les Pointz de Chartres
avant dites; notre Seigneur le Roy,
les ad de novel Grante, renovele
et confirme, et a la Requeste des
Prelats, Contes et Barons, en soen
Parlement a Westmounster, on
Quareme, l'An de soen Regne*

*Articles upon the Charters of
King Edward the First, 6th
Day of March, Anno 1299,
and of his Reign XXVIII.*

Forasmuch as the Points and Particulars of the Great Charter and the Charter of the Forest, which *Henry* the King, our Royal Father, granted to his People, for the Good of his Kingdom, have not been kept or regarded in Times heretofore, because that Punishments were not before established upon the Trespassers against the Tenour of the Charters before said ; our Lord the King has, by a new Grant, renewed and confirmed, and at the Request of the Prelates, Earls and Barons, in his Parliament at

vynt et utisme, ad certeine Fourme et Peyne, ordene en coudre touz iceaus ke contre les Poyntz des avant dites Chartres, ou nul Poynt de eles, en nul Manere viendront en la Fourme qe sensuit; c'est a savoir, *Qe de ci en avant la Grant Chartre des Franchises d'Engleterre, grantee a tote la Commune d'Engleterre e la Chartre de la Forest, en meisme la Manere grantee, soient tenues gardees e maintenues en chescun Article et chescun Poynt, aussi pleynement, come le Roy lud grante, renovele, et par sa Chartre confirme. E ke celes Chartres soient baillees a chescun Viscont d'Engleterre, desoutz le Seal du Roy, a lire quatre Fois par An devant le Poeple en plein Conte, c'est a savoir Prochein conte apres la Saint Michel, e apres le Noël, et apres la Pasque, et al Prochein conte apres la Saint Johan. Et a celes deus Chartres en chescun Poynt, et en chescun Article delles, fermement tenir, ou Remedie ne fust avant par la Commune Ley, soient eslus en chescun conte par la Commune de meisme, le conte trois prodes Hommes, Chevaliers, ou autres loyaux Sages, et avises*

Westminster, in Lent, and the 28th Year of his Reign, a certain Form and Penalty ordered, and established against all those who in any Manner offend against the said Charters, or any Particular thereof, in the Form following; that is to say, That in the first Place, the Grand Charter of Liberties of England, granted to all the Commonalty of England, and the Charter of the Forest, in the same Manner granted, shall be held, regarded and maintained in each Article and every Point, as fully as the King has granted, renewed, and by his Charter confirmed the same. And that the said Charters be conveyed to each Viscount in England under the King's Seal, to be read four Times in the Year before the People in full Assembly, viz. on Michaelmas, Christmas, Lady-Day, and Midsummer. And that the said two Charters, in each Point, and in each Article of them, firmly be held, where Remedy was not before had by the Common Law, there shall be chosen in each Place or Sessions, by the Commons of the same, three honest Men, who

qui soient Justices, jures et assignes par le Lettres le Roy overtes, de sont Grant Seal, de oyr et determiner, sanz autre Bref qe leur commun Garant, les Pleinte qe se ferront de touz iceaux, qe viendront, ou mesprendront, en nul des ditz Poyntz, des avantdites Chartres, et Contetz, ou si sont assignes ausi bien dedens Fraunchises, come dehors; et ausi bien des Ministres le Roi, hors de leurs Places, come des autres; et les Pleintes oyes de Jours en Jours, sanz Delay, les terminent, sanz alluer les Delais, qe sont alluer par commune Ley, &c. &c.

Carta Confirmationis Regis Edwardi I. XIV. Die Februarii, MCCC. Anno Regni XXIX.

Edwardus, Dei Gratia, Rex Anglie, Dominus Hybernie, et

are Knights, or other loyal, wise, and discreet Men, who may be Justices, sworn and assigned over by the King's Letters Patent under his Great Seal, to hear and determine, without other Writ than their common Warrant, such Complaints as shall be made of all those who shall in any wise infringe or misconstrue in any of the said Points, the Charters before said, or their Contents, or which are assigned either within the said Franchises, or without; and as well as the Ministers of the King, out of their Compartments, as the others; and the several Complaints heard from Day to Day, without Delay, they shall determine, without allowing the Delays, which are allowed by the Common Law, &c. &c.

Charter of Confirmation of King Edward I. 14th Day of February, in the Year of our Lord 1300, and 29th of his Reign.

Edward, by the Grace of God, King of England, Lord of Ireland

Dux Aquitannie; omnibus ad quos presentes Litteras pervenerint, Salutem. Sciatis, quod cum nos Magnam Cartam Domini Henrici, quondam Regis Anglie, Patris nostri, de Libertatibus Anglie, una cum Carta de Foresta, concesserimus et confirmaverimus, ac innovaverimus per Cartam nostram, preceperimusque quod Carte ille, in singulis suis Articulis, teneantur et firmiter, observantur. Volumus et concedimus, pro nobis et Heredibus nostris, quod si que Statuta fuerint contraria dictis Cartis, vel alicui Articulo in eisdem Cartis contento, ea de commune Consilio Regni nostro, modo debito emendentur, vel etiam adnullentur. In cujus Rei Testimonium, has Litteras nostras fieri fecimus Patentes. Teste meipso, apud Lincolniam, quartodecimo Die Februarii, Anno Regni nostri Viceffimo-nono.

L. S.

land, Duke of Aquitain; to all to whom these Letters shall come, greeting, Health. Know ye, that when we conceded and confirmed the Great Charter of the Lord Henry, late King of England, our Royal Father, concerning the Liberty of England, together with a Charter of the Forest, and also renewed the same by our Charter, and ordained that those Charters should, in all and every of their Articles, be kept and firmly observed. We will and condescend for us, and our Heirs, that in case that any future Statue should be made contrary to the said Charters, or any one Article in the same Charters contained, that the same, by the Common Council of our King, done in due Manner, shall be amended, or even also annulled. Witness Ourselves at Lincoln, the 14th Day of February, in the Twentyninth Year of our Reign.

L. S.

Prærog. Regis, Anno XVII. Edwardi II. Ædit. Wardi. 14.
Cap. II.

Item, Rex habebit Maritagium hæredum infra Ætatem, et in

Item, The King will have the Marriage of the Heirs within Custodia

Custodiâ suâ, existentes sive Terræ Heredum eorundem, sint ab Antiquo, de Corona, sive de Escheatis, quæ sunt in Manu Domini Regis ; sive habuerint Maritagium ratione Custodiæ Terrarum Dominorum eorundem Heredum, nullo Habito Respectu ad Prioritatem Feoffamenti, licet de aliis tenerint.

Age, and being in his Custody, or the Lands of those Heirs, whether they be held from ancient *ab Antiquo*, from the Crown, or from Escheats, which are in the Hands of our Lord the King ; or whether they may have Marriage by reason of the Custody of Lands of the Lords of those Heirs, no Regard being had to the Priority of the Feoffment, although they should of others be held.

Primei Seizin 1. Cap. 3.

Item, Rex habebit primam Seisnam post Mortem eorum qui de eo tenent in Capite, de omnibus Terris et Tenementis de quibus ipsi fuerunt seisiti in Dominico suo, ut de Feodo, cujuscunque Ætatis Heredes ipsorum fuerint capi-endo omnes Exitus eorundem Terrarum et Tenementorum, donec facta fuerit Inquisitio, prout Moris est, et ceperit Homagium hujusmodi Heredum.

Premier Seizin, Cap. 3.

Item, The King will have the first Seizin after the Death of them, who hold of him *in Capite*, of all Lands and Tenements of which they themselves were seized in their own Domain, as of Fee, of whatsoever Estate their Heirs may be, by taking all Out-goings (or Profits) of their said Lands and Tenements, until Inquisition shall be made as the Manner is, and he shall have taken or received the Homage of each Heir respectively.

Ibid.

Ibid. Partitio 1. Cap. 5.

Et si una Hæreditas, quam de Rege tenetur in Capite, descendat pluribus Participibus, tunc omnes illi Hæredes faciant Homagium Regi; et illa Hæreditas, que de Rege tenetur, participabitur inter Hæredes illos, ita quilibet eorum extunc Partem suam tenebit de Rege.

Ibid. Partition 1. Cap. 5.

And if one Inheritance, which is held of the King *in Capite*, should descend to many Partners, then all those Heirs shall do Homage to the King; and such Inheritance, which is so held of the King, shall be divided among those Heirs in such manner, as that each may hold his Part from the King.

Register, Fo. 3, 6. —
Fitzherbert, N. Brev. —
Writs of Right. —
Britton, Finch, Old N. B.

[WHEN one Son enters and occupies the whole, yet Writs of Right lye between Privies in Blood, such as Brothers, but not Strangers; and is sueable when two or more of such Parties, who claim by Descent from the same Ancestor, and is deforced, who have their Remedy by this Writ, as in Gavel-kind or Coparcenary Tenures.

C. J. Robinſon
of Deſcents.

*Wright of Te-
nures, Fo. 58.

THIS assumed Title in Primogeniture arising from Feodal Principles, but extended farther than those Principles will warrant, has been long looked upon as a peculiar Hardship; both because the Establishment of the Feodal System in this Kingdom was originally founded upon a Fiction * (a despotic Military Power) and also because the Substance of those Tenures being now done away by Stat. 12 Car. I. cap. 24. it seems most unreasonable to reserve to this Day one of their most unequitable Consequences; namely, That innocent younger Children and Orphans should not only be reduced

reduced to present Poverty, but removed from even a Possibility of ever inheriting the least landed Property, upon the casual Event of their common Father's Decease, intestate. Surely, the express Words of the Act, *viz.* " Those Tenures, together with all Fruits " and Consequences thereof, are abolished and taken away," are a sufficient legal Authority to enforce the Rights of younger Sons to a Partition of Lands in a summary Way, without the tedious Process of our Courts of Law, and a final Appeal, in a Matter where the general Issue is so plain, and the Facts in no wise disputed.

Act 12 Car. II.
cap. 24.

THE Words Heir or Heirs, always expressed in *Magna Charta*, prove joint Succession to Patrimony, and the Rights of the meanest as well as of the greatest Subject, both as to Life, Limb, Fine or Imprisonment, as well as those of Patrimonial Successions, and bound us thereto by the most solemn Invocation of the Supreme Being, and execrated to Perdition both the Souls and Bodies of the Contraveners, as may be seen in the Course of this Work; not by a private Act of a Party, but by the most public national Act of King, Lords Spiritual and Temporal, and Commons, in general Council assembled at *Westminster-Abbey*, that hath been exhibited in any other Nation either before or since: Under which most exemplary Compact between Legislature and People, all the Liberties of the Church, Peers and Commons are claimed to this Day. Such a Deed as this is the sacred Refuge of every lawful Subject, especially, when comprized in the Intent, Meaning and Spirit of the Coronation Oath, from *William I.* to our most just and excellent Prince, *George III.* (whom may Heaven long preserve, and from whose House may the Sceptre of these Kingdoms never depart!) Let then the highest to the lowest Degree among us, whether Judges, Fathers, Guardians, or Testators, lay their Hands on their Breasts, and try if they can dispense with contributing to support, and by all dutiful and lawful Means, endeavour to prevail with such, with whom the Power is invested, to restore the lawful

Title, which all Sons have (from every divine and human Law) of being protected from the Indignity laid upon Illegitimacy, and from the Punishments due only to Felons and Outlaws, disinherited of their lawful Blood and immediate Consanguinity, and robbed by an iniquitous, arbitrary and blundering Canon of Inheritance, of their equal Share of an intestate Parent's Lands. Mr. Locke avers, that the very Name of Government ceases when any notorious Injustice is permitted to reign, after due Publication thereof by the Parties injured: And further, as *Common Law* can do no Wrong, and the Disinheritance of Infant Children is such in the highest Degree, Ergo, this Canon is not Law: Thus the injured may legally plead, and by the Virtue of the solemn Oaths herein exemplified, may most solemnly adjure in the same Terms, all manner of Persons, of what Degree or Condition soever they be, to assist in procuring Justice, as *per Legem et Potestatem Terræ et Judicium Parium suorum*, (so often mentioned in *Magna Charta*) the Law and Power of the Land, and Judgment of their Peers, (as they shall tender the contrary before the Tribunal of Almighty God.) That so necessary a Piece of Justice be now done, is proved by the concurrent Voice of all Mankind; and would not be delayed or denied under the most despotic Administration in *Europe*. All Lawyers admit, that Soccage Tenures, either free or common, descended in equal Partitions to all Sons, to enable them to increase into many Families, for the better Defence of their Country, and Furtherance of Husbandry and Agriculture; according to which latter Tenures, all Lands, &c. are now ordered to be adjudged and construed by 12 *Car. II.* cap. 24.

THE Writer hereof now begs Leave to recapitulate the progressive Argument as it appears in the foregoing Discourse, by setting forth the first Principles (as concisely as possible) on which the whole is grounded; because, if those be false, the Superstructure ought not to be looked upon as able to endure the Storms and Tempests,

Tempests, which interested Opponents may endeavour to raise against it. However, he fears not to stand the Test, in Defence of the Excellency of the true Common Law of *England*. In the first Place, it gives (agreeable to the Laws of God and Man) to a Father, possessing a Freehold Estate, or Lands in free and common Soccage, a full Power to dispose of his Lands, or other his Fortune, to his Son, Sons, or any of them, or to any other Person, subject to the Proviso's of doing the same as right Reason may suggest, in the Eye of, and as the Civil, Canon, and Municipal Laws of this Realm do ordain. 2dly, The Common Law of *England* is, by the Verdict of a Jury, the Law of Nature, and ever has and will grant, that they who are *ex Aequo*, one Man's Children, should (if not *ex Aequo*, yet certainly, not *ex Iniquo*) be provided for, because having (during their Father's Lives) *Jus ad Rem*, though not *Jus in Re*, to the Father's Goods. The Law calleth them all, *Quasi Dominos Bonorum Patris, et diversi Haeredes, qui descendunt de eadem Stipite*; "as if Masters of their Father's Goods, and several Heirs, who descend from the same Stem," whose Right commences at the Father's Death, and are accordingly to succeed thereunto in equal Partitions, where no other Disposition is made by his Will or other Deed, consequently upon Intestature. 3dly, The General Laws give no Precedency or Superiority of Right to Eldest Sons, nor make any Difference between real and Personal Estates, all being comprehended under the Name *Bonorum*. 4thly, The Fifth Commandment enjoins Obedience of all Children to their Parents, upon the promised Reward of long Life, and Enjoyment of those Lands which the Lord thy God shall give unto them, meaning their Fathers Inheritance; not to one only, but to all. 5thly, By our Common Law, and *Stat. 2. Westm.* giving Liberty to Fathers to give or divide their Substance at their Pleasure, or among their Children; it does not direct any Limitation to Primogeniture solely, or (in case of Intestature) set aside the Younger, which would amount to a Punishment equal to Felony or Outlawry.

Stat. Westm.
13 Edw. I.

lawry. Equity says, who hath the better Cause? The Younger Brother, who claims only his Patrimony in common with his Elder Brother, or the latter, who seizes upon, and possesses the whole Estate, without the former obtaining a single Acre thereof, or a Forty Shilling Vote for the Representatives of his native Country?

Quintilian.
Orat. pro Cecina.

Vide System of
Moral Philoso-
phy, by F.
Hutcheson, LL.D.
Professor at
Glasgow, 1755.

Keate's Law of
Geneva.

Preface Anal.
Leg. Angl.
Pag. 10.

See Littleton ad
Finem.

Coke upon Lit-
tlen.

Incommoda vitantis melior quam commoda Petentis est Causa. "That

"Cause is better which seeks only a general Good, than that

"which strives at obtaining an exclusive Monopoly, to the Ruin

"of his Brother. In the Succession to private Estates in *England*,

"there can be no good Reason alledged why Primogeniture should

"take place to the utter Destruction of every other Child (upon

"the Event of Intestature, without sufficient Personalities more

"especially) such a Custom is absurd, and in no wise supported

"by the Jurisprudence of this nor any other Nation, unless under

"a Devise by Will or other Settlement of the Ancestor, on whom

"alone the Odium of such unnatural Injustice must in that

"Case fall." In *Switzerland*, where every Male is a Soldier, all

Sons equally inherit the Father's Lands, &c. upon this well-known

and established Maxim; namely, for the better Defence of their

Country, by Population, and promoting of good Husbandry and

Agriculture. We see, altho' Lord Coke allows *Magna Charta* to

be founded on our ancient Laws and Liberties, yet he would have

this impolitic and unjust Canon to operate as if it was the Law of

the Land. But he is not authorized so to do by his Master *Lit-*

tleton, who candidly acknowledges, that he does not undertake to

give the Contents of his Works, as the true Law, but only *In Or-*

dine ad, in order to lead towards finding out and discovering what

the real Law is: "*Jeo ne voill que tu crez, tout ceo que Jeo ay dit*

en lez ditez Livres, soit Ley; quar Jeo ne ceo voill emprendre ne

presumer sur moy." And the former confesses, in his Comment

on *Littleton's* Section 534th, that the Niceties observed in Plead-

ings, tend to little more than to fill the Pockets of the Lawyers,

and create more Disputes than the Matter itself; whereby many

important

important Causes are lost, without ever having been so much as examined into as to the Merits. Wherefore, may we not truly say? *Miserum est Servitium, ubi Lex est vagum est incertum!* "Miserable must that Slavery be, where the Law is vague and "uncertain!" Proximity of Blood to the Ancestor, they both agree, hath the Right of Inheritance by Descent; one Son cannot therefore exclude the other Sons, who are equal, *Proximi*, to the Parent's Blood, and to be considered in Descents, as the immediate Lineal *Proximi Sanguinis*, or next of Blood; but if the precise Opinion prevails, that one Son only should inherit, still it stands confuted, on its own Principles, for the younger Son must then be the *Proximus gradû, Sanguini amborum Parentum*, as proceeding the last therefrom, which is as good Logic on one Side as the other. But as *Nullum Iniquum in Jure præsumendum*, the Case truly being, that the whole Blood by the immediate Descent is the right Heir (whether consisting of one or more Sons) *Quasi vinculum Personarum de eodem Stipite descendendum*, so there does not appear any one Act or Statute of Parliament, which ordains Succession to vest in Primogeniture solely, as utterly inconsistent with our Constitution and *Magna Charta*; and has ever been held in Contempt by all discerning Students*. Law it cannot be, under any Definition, because it oppugns all Civil, Municipal, Canon, and Equity Laws, as also that which supersedes them all; namely, the Common Law of every Nation under Heaven, derived from the general Tenet of true Philosophy, *Quod oderis, alteri ne feceris*; Do as you would have done to you, which includes all the Law and the Prophets. The Pseudo-Canonists, who plead general Custom in favour of their Patrons Mode of Succession, would do well to exhibit their Proofs; otherwise the following Statutes will most clearly shew, that all Landed Estates of Intestates vested in Partitions by Descents to all Sons alike, as the common Law of *Magna Charta*, not confined locally to *Kent*,

* See Coke's Maxims of Inheritance, turned into *Hudibras* Verse 40 Years ago, and lately republished, viz.

The Eldest to all others, shall inherit,

Because he is so, which Coke's Law makes Merit, &c.

Preface to Sir
E. Coke's
Entries.

Justinian Codex.

Calculus.

Dictum Cleobuli
Lindii.
Holy Writ.
Custom not
Law, unless rea-
sonable, just and
voluntary.

which County has nothing at this Day, except that general Law, (bravely supported through their own Virtue,) to maintain their Gavel-kind by, or other particular Districts, but in common with the whole Realm; and that no Title appears to privilege the sole Succession thereof to the Eldest, only by such Laws as were afterwards obtained for local Purposes and Pride, under that vain-glorious Prince, *Henry the Eighth*, who loved to support every Appearance of Splendour and Magnificence in his Court, even after he had expended the whole Treasure of Four Millions Sterling, which his Royal Father bequeathed to him; such Acquisitions never prospering which are made by the Plunder of others.

Stat. for Lord
Cromwell, Kent,
Wales and Nor-
tinghamshire.

PROEM to 31 Hen. VIII. Partit. 2.

1st Hen. VIII.
Partit. 2.

“FORASMUCH as by the common Laws of this Realm, divers of
“ the King’s Subjects being seized of Manours, Lands, Tenements
“ and Hereditaments, as joint Tenants, or as Tenants in common
“ with other, of any Estate of Inheritance in their own Rights,
“ or in the Right of their Wives, by Purchase, Descent, or other-
“ wise; and every of them so being Joint Tenants, or Tenants in
“ common, have the like Right, Title, Interest or Possession in
“ the same Manours, Lands, Tenements and Hereditaments, for
“ their Parts and Portions, jointly or in common, undividedly
“ together with other, &c.” enacts Partition between them, Bro-
thers or other Persons. 32 Hen. VIII. Cap. 32, confirms the above,
and extends the same to joint Tenants, and Tenants in common,
for Term of Life or Years; and to joint Tenants and Tenants in
common, where one or some of them have but a particular Estate
for Term of Life or Years, and the other have Estates of Inheri-
tance of and in any Manours, Lands, Tenements and Heredita-
ments, or Freehold Estates, enacts, to be partitioned off, each
Brother, if he chooses it, to have his Portion. These two Statutes
plainly shew, that Younger Sons could inherit Lands, separate
Manours,

Manours; Tenements and Hereditaments in Partition by Descent, as their Parts and Portions of their Patrimonial Inheritance, and that according to the common Law of the Land. *Stat. 11 Hen. VII. Cap. 20.* ordains, that no Tenant in Possession by Covin or Fraud, can levy Fines, or bar any Heir who hath Inheritance.

THE following Statutes, obtained for local Purposes, do also prove the Necessity of making such Acts, to enable the Parties to devise their Lands, contrary to the Laws and known Usages, Liberties and Free Customs of the Realm; which was either Custom of Gavel-kind, or else Devise by common Law, *Stat. Westm. 13 Ed. I.* All Persons inheritable to Lands in *Wales*, shall inherit as without Partition, *Ibid. Sect. 35.* Lands in *Wales*, which have been used by Custom to be partible among Heirs, shall so continue.

ALL the Lordships, &c. of which several Gentlemen in the County of *Kent* be seized in Fee-simple or Fee-tail, shall be changed from the Custom and Nature of Gavel-kind, and shall descend according to common Law: *Id est, secundum Formam Donationis; or Mentem Legislatoris*, according to the Will, Formedon, or previous Settlement of the Ancestor; as by *Stat. Westm. 13 Ed. I.* All the Lands, Manours, Hereditaments, &c. within the Lordship and Soke of *Osualdsbooke*, in the County of *Nottingham*, shall be changed from the Custom of Gavel-kind, and shall descend according to common Law, as above, *Stat. Westm.* All Lands in *Wales* were to be held as *English* Tenures, according to the common Law, (*Stat. Westm.*) and not to go in Partition, as in Gavel-kind; that is to say, Lands were made subject to the Uses of Wills, &c. as well here, as by the above *Stat. Westm.* No feigned Recovery, by Assent of Parties, shall bind the Heirs, whether Vouchers be had to such Recovery, or not.

*Stat. 27 Hen.
VIII. Sect. 2.*

*31 Hen. VIII.
Cap. 3.*

*Stat. 32 Hen.
VIII. Cap. 29.*

*Stat. 34 Ed. 1.
Ibid. Cap. 26.
Sect. 91. Ibid.
Cap. 20. Sect. 2.*

THE Statute for Part of *Kent* was obtained by the newly-created Lord *Cromwell*, in order (to aggrandize his Family) to permit him to settle his whole Estate on one Son solely; a necessary Appenage for to support the Dignity of Family (to be sure;) he being the Son of a Blacksmith at *Putney*, and raised himself by his Skill in the Times, to great Preferment at Court, did in some measure forward the Reformation, but unluckily lost his Head at last, for opposing the King's Marriage with *Catherine Howard*. No wonder, if in this Reign, the Opinions of both Law and Gospel submitted to the Conveniency or Gratification of the Monarch and his Flatterers, who put to Death two Queens, (one deservedly, *Catherine Howard*) two Cardinals, (one condemned, the other executed) three Dukes; of Marquisses, Earls and Earls Sons, twelve; Barons and Knights, eighteen; and of Clergy, seventy-seven; and two Lawyers, *Empson* and *Dudley*, who yet had acted, as many others before and since have done, viz. according to the polite Construction which was put upon the Laws, so as to serve a present temporary Purpose, without regarding the native and original Rights of the Subject, comprized in our Palladium, *Magna Charta*, although so often enforced, upon the Penalty of incurring the Fruits and Consequences of wilful and corrupt Perjury.

On 28 July,
1541.

*Suspenduntur
Papiste, Comburentur
Anti-Papiste, says a
Foreigner.*

*Eschines,
Demosthenes, &c.
Oratio Eschines
in Ctesiphontem.*

*Quasi, Coke's
Canon of Inheritance.*

THE best Orators of ancient Times, always adjured their Auditors by the Veneration which they owed to the immortal Gods, to see that strict Justice be done according to the true Laws; one of whom pleading before the Senate of Five-hundred Persons, tells them of the Boldness and Insolence of some Orators, whom neither the Laws, nor the Rulers of the Commonwealth, nor the Courts nor the Tribes could well manage; yet confiding in the Gods, he implores them to deliver the Laws from those Constructions, which (by their Combinations) were brought to have more Weight than the Rights which themselves had first received from *Solon*. Surely then, a Christian Tribunal will also

also have some Regard paid to it, as such is now appealed to in this Cause. Our Readers excusing this Digression, let us proceed to observe, that when the Blind lead the Blind, they both fall into the Ditch; so fares it with the Followers of this Canon, without first analyzing its constituent Parts: Illegal, iniquitous and infamous as it is, yet by some has been called Law, by Prescription, or by Custom; Terms opposite, if not incompatible with each other; for the former implies a Presumption, that it hath been founded heretofore on a constitutional, legislative Authority; the least Evidence of which not being yet brought to Light, such a Position cannot obtain Virtue of Law, or Force sufficient to justify so violent a Breach in our invaluable Constitution. Such Power rests only in Parliament, and what that ordains, ought to be submitted to at all Events, by every good Subject.

*Nullum Iniquum
in Jure præsumendum.*

*Nemo plus Juris
trans ferre potest
quam Ipse habet.*

THE latter, that is to say, a Law by the Custom, means, one by common Consent admitted, voluntary, just, reasonable, and constitutional.

AN unjust most partial and most unnatural Distribution of an Intestate's Lands to Primogeniture solely, can never, by the most strained Construction, be thought the free Custom and Liberty enacted by *Magna Charta*; can that be called *English* common Law, which reduces six Orphans in one Family to the most abject and deplorable State, that can be inflicted on the human Kind; namely, extreme Poverty, without Ability for honest Labour, or which (if attained) would perhaps be impeded through family Pride, thereby exposed to Attempts towards procuring Affluence sufficient to assort with their own Blood, though at the Risque of their Consciences and Honour? But so have we not learned our excellent Laws, which dictate, enact, and enforce much more comfortable Doctrines. *Magna Charta* ordains free Liberties and all free Customs to every lawful Subject of these Realms, and that these Words

M

imply

imply every Right of Birth, Country, and Consanguinity, which hath subsisted from the Beginning of Time in respect to Inheritance in Paternal Lands, the express Tenour of *William* the Ist's plain Charter fully proves, *viz.* "That every Child shall be his Father's Inheritor after his Days; that you shall be all your Laws worth that you were, when you had them best, says another Part, and that such is to be held as the common Law of the Land, and never be altered." This, by a short Recapitulation, we shall shew to be the first Law, under a Theocracy, and continued since in every Country upon Earth, as long as the People supported their Liberties from the Power of Military Sway.

IMPRIMIS. *Terram autem dedit Filiis Hominum*; the Earth he gave to the Sons of Men. *Adam* had two Sons, *Cain* and *Abel*; the Eldest chose to be a Tiller of the Ground, and had Land for that Purpose for his Patrimony: The Younger chose to be a Feeder of Sheep and to raise Cattle, for which Purpose, also, he had ten times the Quantity of Land in Use; which was his Patrimony no doubt, as we do not find he held Lands of his Brother. *Cain* forfeited his Lands by Murder and Fratricide, and his whole Race was extinguished and cut off by the Flood. At this Period *Noah* had three Sons, *Shem*, *Ham*, and *Japhet*; among whom he divided the then known World; *Europe* to one, *Asia* to another, and *Africa* to *Ham*, notwithstanding he cursed him, for his Disrespect. Thence we come to the Jewish or Hebrew Oeconomy; there Partition appears plainly to be the Birthright of Sons, in allotting two Portions to the Eldest Male, which could not be known, as to *quantum*, until the others had been ascertained by Division, and so tenacious were they to preserve the Landed Inheritance to each Tribe respectively, that to retain it, they obliged the Daughters, when it devolved on them, to marry within their own Tribe and Name respectively. Whereas the pretended

5

Claim

Claim of Primogeniture soon extinguishes both Family, Name, and Landed Estate ; for by that, upon Failure of Male Heirs to the Eldest Son, the Inheritance vests in the Daughters, who marrying Strangers, with them go Lands, Names, and Titles for ever. Whereas, if we (taking a good Providence for our Guide) give all our Sons Tools to work with, and an equal Portion of Landed Possessions to begin upon, no Man need fear the Want of an Heir Male of his own Name, Blood and direct Lineage to enjoy his Estate ; or (as the Scripture has it) to stand before the Lord for ever : This free Liberty now subsists in *Magna Charta*, every Purchaser may, by Gift, Deed, Testament, or other Formedon, grant, alienate, devise, or dispose of his Freehold Lands ; so upon Intestature, without Devise or Disposition, every Man's Possession, Purchase, or Acquisition, becomes instantly the Object of the Common Law of every Country, and that Law disposes of such Inheritance, whether of Lands or other Goods, suitable to the Constitution of each Country respectively. This Kingdom is a free, imperial Kingdom, and (for its Interior Government) independent of the whole World ; can make and abrogate Laws, and deprive its Subjects both of Property and Life ; the aggregate Capacity of our three Estates can alter the Constitution, and annul even *Magna Charta* itself, (provided they can dispense with their Oaths) but as no Act of Legislature can be produced which ordains *Disherison*, and the Pains of Felony to be inflicted upon all Younger Sons, (lawful and natural born Subjects of this Realm) what Rule, Opinion, Presumption, or Conclusion of one Man, or set of Men, can deprive such Subjects of Protection under the Laws, of inheriting according to what these Laws enact, through the common Consent of every free Nation upon the Face of the Globe, and here by Ourselves, under the most solemn Engagement of *Magna Charta* ; which great Bond of our Society hath hitherto been respected (except by the Usurpation of this Canon) equally with the Laws of the Antient *Medes* and

A Plea, in favour of perpetuating a Family and Name much stronger than to Primogeniture.

*Nam sit quisque
Faber Fortunæ
sue.*

Let every one
be the Architect
of his own
Promotion.

As the *Venerian*
Professor says,
" The *Greeks*,
the *Romans*, the
Saxons, and even
the *Feudriffs*
themselves, di-
vided the Lands
among all Sons.

Plutarch, in *Vit.*
Lycurg.

Persians, (never to be altered) and with us, *Doomsday Book*, in the *Exchequer*, was so named from the like Intention, as being the Ground Work of *Magna Charta*. To evince by further Proofs that it was the received Custom, Usage and Maxim in every Age, Nation and Government, for Sons to inherit Lands equally, we find *Lycurgus*, (who flourished 882 Years before the Incarnation, or 2647 Years ago) when he proposed his *Lex Agraria*, gave this Reason, *viz.* That he would have all his Countrymen live as Brothers and Coheirs. And having prevailed with them to accept that Law, travelling through the Country in Harvest Time, he observed great Abundance of Corn, of which the Sheaves and Shocks being all equal, he smilingly addressed his Followers: Methinks, says he, *Lacedamon* is like the Inheritance of many Brothers who have newly made a Division among themselves.

Ibid. in *Vit.*
Solon.

THIS happened 300 Years after *Moses*, and prior to either *Romulus*, *Numa*, or *Solon*. Surely our Canonists of Inheritance in Primogeniture cannot deserve the Sarcasm which *Anacharsis* delivered in full Senate at *Athens*: " He wondered much that in " *Greece*, wise Men should make Laws, and suffer Knaves and " Fools to determine upon them."

PROBABLY some such Pupils, for the profitable Practice of the Law, (as Lord *Coke* taught by his Works) are the present Advisers in construing *North American* Charters!

IN like manner these Dispositions of Paternal Lands, (deduced from the universal Consent of all Ages) will also appear, by recurring to the Ancient Laws of the 12 Tables (wherein the Rules of Lineal Ascent and Descent are calculated with the greatest Perspicuity, and may be defined under the latter Word Descent; for Succession implies *post Obitum*, or Decadence from one departed to another living,

living, though it be to a Father. Ordaining, that the Father succeeds the Son, or Sons, on failure of their Issue Male and Female, as he is the *Proximus Agnatus* to them; and the Sons being allowed as near akin to the Father, as the Father is to the Sons, do, in Consequence thereof, succeed equally to the Father, having no Defect of Country or Lineage, and both joined in the same natural Parental Blood. That profound Casuist Lord Coke, makes no Lineal Ascent, except through the Collateral Line of the Uncle; but strip him, and most of his blind Adherents, of their technical Terms, false Latin, and bad Translations of almost every Law Term, written in the *Norman* Tongue, (ridiculous to the Bar practice at this Day) where too a Liberal Education is often thrown aside (as useless to a Lawyer) and the Desk of an Attorney substituted in its Stead, no wonder then if the Study of the *Jurisprudencia Universalis* is more neglected than among any other *Jurisperiti* in Europe; with such Want of Arithmetical Knowledge, that one grand Plea in their Works against Division of Family Property, is, the Difficulty of splitting Estates, as they term it. The *Roman Propositus* is the Father; the Father is (according to Feudal Principles) *Quasi* Lord of the Domain, the Sons are *Quasi* his Vassals, they purchase and die without Issue; the Lord (*Quasi* of the Fee) has his *Escbeat*: This is Law, tho' by means seemingly contradictory. For the truth now is, the Sons are free Subjects, can devise, alienate or dispose by Will, other Deed, or Formedon; yet on failure of all these and Issue, the Operation of Law gives it to the next in Blood, which is the Father, and so *Vicé Versâ*. But what has the Uncle to do with this, all the while, until the Father or first Purchaser be fully satisfied? The Uncle cannot here inherit either jointly or separately with the Father; for tho' a Brother of the whole Blood (*i. e.* by Father and Mother) yet being only of half Blood in respect to the Sons, their Possessions must go to the nearer akin, *i. e.* the Father *supra dict.* This corresponds with our Law Maxim, Estates cannot lineally ascend while any Lineals or Colaterals in the Descent remain;

L. Ch. J. Hale, observes, *Nullus defectus Patriæ, Nationis vel Linguentiæ, et alibi, utrinque conjuncti Sanguine, Parentali Naturali.*
Hale.

Coke upon Littleton.

Vide Proem to Anal. Leg. Angl. ex. gratia.

Coke's Doctrine of Descents disputed and reversed.

Coke's Ascents of Inheritance disapproved.

main ; but the same being extinguished, and where all do also fail in the Ascent, then they become escheated to the Crown ; the *Primum Mobile*, or the Fountain of Title, agreed upon generally.

Cr. Car. 602.
Lord Ch. Bar.
Hale, Bacon's
Case, per omni.
Justic. Ang.
Collingw. v.
Pace 427. Scacc.
Reg. Littlel.
Sect. 20.

Inst. Lib. 3.
Tit. B. ut An-
tes Decret. Gra-
tiani. Laus 35.
qu. 5.

FURTHER, as the Descent between Brothers is by Law admitted to be an immediate Descent ; and as Brother and Brother make but one and the same Degree, or the first Degree of Consanguinity from their common Parents, the following Authorities will confirm ; that since they have no Disability in Blood or Lineage, so there can be no Bar to their Patrimonial Rights, except from their own separate Acts or Attaint respectively. The Civil Law says, *Nullus est proximior Fratre (nam post Obitum Parentum) prima Causa in Successione est Liberorum* : “ None is nearer than a Brother, for “ upon the Death of Parents, the first Cause to be considered in “ Succession is that of the Children.” Does Sisters succeed equally ? Are younger Brothers then to be ousted of every Acre of their Patrimonial Lands ? I conceive not. The Canon Law provides, that *Frater et Frater, Soror et Soror, sunt in primo Gradu* : “ Brother “ and Brother, Sister and Sister, are all in the first Degree, and “ ought to have their several equal Parts of Inheritance.” But this is over-ruled by our very deep Political Maxim-mongers, under the Sanction of a Name they are not warranted to apply, *viz.* the Common Law.—For a Jury has never yet decided upon this matter, as supposing it to be governed by such Tenets as have been adopted in the common Run of Practice in the Courts, where often *Stat pro Ratione, Voluntas, and sic Vulgi, Consuetudinem pro Lege habent*. And thus the Vulgar hold Custom for Law.

Wide Glow.
Comment.
sur Coutum de
Normandie,
Cap. Desche-
ants.

ANALAGOUS to the Common Law of *Normandy* (not the Feudal Law, for that never had any other Source than the Sword) is our *English* Common Law in most Parts, particularly touching Descents, *viz.* *Et doit un sçavoir, que tonque le Custome de Pays de Normandie, pur compter les Degrez en Ligne Collaterale, se longue les Canonistes, deux*

deux Freres ont le premier Rangen, Degrez et Eont que un Degre :

“ And one ought to know, that it is the received Custom of the
 “ Country of *Normandy*, to reckon or count the Degrees in the
 “ Collateral Line, according to the Canonists, that two (or more)
 “ Brothers have the first Rank, and they have but one and the
 “ same Degree of Consanguinity.” The Municipal Law is the
 same in all Countries throughout the World, encouraging every
 Measure which may contribute Defence and Security to a Country;
 and whether that is best effected by the Canon here called in
 Question, or to the more humane System now pleaded for, any
 Man may soon decide.

Item. Antea
 Grand Courtu-
 mier de *Norman-*
die, apud Ter-
 rein, Lib. 6.
 Cap. 6. Cap. de
 Descendants.

BUT to settle all, Lord Chief Baron *Hale* says, let us look
 back upon the Institution of *Justinian*, Lib. 3. Tit. 3. a most
 authentic Collection, 8 Tit. *De Hæredibus ab Intestato Venientibus* :
 “ That is, who become the Right Heirs of an Intestate ?”
 Concerning which Inquiry, that ancient, approved, and universally
 admired Body of Laws enacts, “ That Sons do succeed in the same
 “ Degree in Coparcenary, or equal Partitions to an Intestate, as
 “ well to Lands as to other Goods, of their common Blood the
 “ Ancestor, or last Purchaser.”—Such are the free Liberties given
 to us by our invaluable Palladium, *Magna Charta* ; such are the
 free Customs to which every Part of his Majesty’s Dominions are
 still entitled, except where local Acts of Parliament have been
 infidiously obtained to annul some. These Laws are general by
Magna Charta ; those Acts are local only.

Argument *Hale*,
Veuir’s Re-
 ports. Colling.
 v. Pace 425,
 et seq.

Cod. Just. An-
 tea Novellæ.

GAVEL-KIND is yet preserved, and allowed as good Law through
Cumberland, *Northumberland*, and *Westmorland*, and held good for
 Defence of those Borders ; *Kent*, *London*, Part of *Wales*, and the
 Marches of *Yorkshire*, *Gloucestershire*, *Nottinghamshire*, &c. have
 claimed and been allowed it.—Gavel-kind was used in *Ireland*
 and *Wales*, and Males ever divided on Descents from Intestates,
 and cannot now be impeached by any known Law or Statute in
 Being.

2 Keb. 672. 679.
 Lev. 172. ibid.
 293.

Davis’s Reports.

Being.—Some claim *Borough-English*, others *Tanistry*, for their Customs; but both of these may be justly disallowed, as they are partial and involuntary, not free, and impede the original, as well as the acquired Rights of lawful Succession in all Children; *Secundum Tenorem Magnæ Chartæ*.

LIBERTIES and RIGHTS.

I. MAGNA CHARTA, 9 *Hen. III.* Cap. 9. The City of *London* shall have all her ancient Liberties and free Customs, and all other Cities, Boroughs, and Towns, and the Barons of the Cinque Ports; and all Ports shall have their Liberties and free Customs.

MAGNA CHARTA, *ibid.* Cap. 29. No Freeman shall be taken or imprisoned, or disseised of his Freehold, or of his Liberties and free Customs, or be outlawed, banished, or otherwise destroyed; nor shall the King pass or send upon him, but by the lawful Judgement of his Peers, or by the Law of the Land; the King shall sell to none, or deny or delay to none, Right or Justice.

4. Stat. Confirmat.

CHARTA, 25 *Edw. I.* Cap. 3. If any Judgement be given contrary to the great Charters, it shall be undone, and holden for nought.

5. *Ibid.*

THE same Charter shall be sent under Seal to the Cathedral Churches, and shall be read before the People two Times by the Year.

6. *Ibid.*

CAP. 4. All Archbishops and Bishops shall pronounce Sentence of Excommunication against those that by Word or Deed, or Counsel, do contrary to the said Charters, or that in any Point break them; and the said Curses shall be twice a Year denounced against any such Contravenors.

SUPER

SUPER CHARTAS, 28 *Edw.* I. Stat. 3. Cap. 1. The great Charter of Liberties, and the Charter of the Forest, shall be delivered to every Sheriff, to be read four Times in the Year before the People in full County, *viz.* the next County after the Feast of St. *Michael*, and at the next after *Christmas*, and at the next after *Easter*, and at the next County after the Feast of St. *John*; and there shall be chosen in every Shire Court, by the Commonalty there attending, three sober and substantial Men, Knights, or other, which shall be Justices sworn, and assigned by the King's Letters Patents to hear and determine (without any other Writ but their Commission) such Complaints as shall be made upon those that offend against any Point in the Charters, and to hear the Complaints from Day to Day, without Delays allowed by the Common Law; and the same Knights, or other Liege-Men as aforesaid, shall have Power to punish all such as shall be attainted of any Trespas done contrary to the Charters (where no Remedy was by the Common Law) by Imprisonment, by Ransom, or by Amercement: Nevertheless the said Knights, or other, shall not hold Plea where there hath been Remedy provided after the Course of the Common Law by Writ; nor shall any Prejudice be done to the Common Law, nor to the Charters aforesaid; and if all three cannot attend to do their Office, two of them shall do it, and the King's Sheriffs and Bailiffs shall be attendant to do the Commandments of the said Justices.

STAT. 34 *Edw.* I. Stat. 4. Cap. 6. All Clerks and Laymen shall have their Laws, Liberties, and free Customs, as they have used to have the same at any Time when they had them best; and if any Statutes have been made, or any Customs brought in contrary to them, such Statutes and Customs shall be void.

STAT. 34 *Edw.* I. Stat. 6. All Archbishops and Bishops, for ever, shall read this Charter in their Cathedral Churches twice in the Year, and in their Parish Churches shall openly denounce,

N

accursed

XII.
See pretended
Canon of De-
scent in *Blackb.*
Anal. Leg.
Angl.

accused all those that willingly procure to be done any thing contrary to this Charter.

XIII. STAT. 1 *Edw.* III. Stat. 2. Cap. 9. Cities, Boroughs, and franchised Towns, shall enjoy their Franchises, Customs, and Usages.

XIV. STAT. 2 *Edw.* III. Cap. 8. It shall not be commanded by the Great, or by the Little Seal, to disturb or delay common Right; and though such Commandments come, the Justices shall not cease to do right.

XV. STAT. 5 *Edw.* III. Cap. 9. No Man shall be attacked by any Accusation, nor fore-judged of Life or Limb; nor shall his Land or Goods be seized into the King's Hands against the Great Charter, and the Law of the Land.

XVI. STAT. 14 *Edw.* III. Stat. 1. Cap. 1. Holy Church shall have her Liberties in Quietness, and the City of *London*, and all other Cities and Boroughs, shall have all their Franchises and Customs which they have reasonably used in Time past.

XIX. STAT. 25 *Edw.* III. Stat. 5. Cap. 4. None shall be put out of his Franchise or Freehold, unless he be duly brought to answer, and judged by Course of Law; and if any Thing be done to the contrary, it shall be redressed and holden for nought.

XX. STAT. 28 *Edw.* III. Cap. 3. No Man shall be put out of Land, nor taken, nor imprisoned, nor ditherited, nor put to Death, without being brought to answer by due Process of Law.

XXII. STAT. 1 *Rich.* II. Cap. 2. Peace shall be firmly kept, so that all good Subjects may safely go, come, and abide according to the Laws and Usages of this Realm, and good Justice and equal Right shall be done to every one.

STAT.

STAT. 2 Hen. IV. Cap. 1. All the Lords, Spiritual and Temporal, and all Cities, Boroughs, and Towns enfranchised, shall enjoy all their Liberties which they have duely used, and full Justice and Right shall be done, as well to the Poor as to the Rich.

XXVI.

STAT. 1 Will. and Mary, Stat. 2. Cap. 2. The Lords Spiritual and Temporal and Commons being assembled, in a full and free Representative of this Nation, for the Vindicating their ancient Rights and Liberties, do declare, *inter alia*, that the pretended Power of suspending of Laws, or the Execution of Laws, without Consent of Parliament, is illegal; that it is the Right of the Subjects to petition the King, and all Commitments and Prosecutions for such Petitioning are illegal; and that for Redress of all Grievance, and for the amending, strengthening, and preserving of the Laws, Parliaments ought to be held frequently; and they do claim, demand, and insist upon all and singular the Premises, as their undoubted Rights and Liberties.

XXVII.

STAT. 12 and 13 Will. and Mary, Cap. 2. Sect. 4. Whereas the Laws of England are the Birthright of the People thereof; all the Laws and Statutes of this Kingdom, for securing the Rights and Liberties of the People, are by his Majesty, with the Advice and Consent of the Lords Spiritual and Temporal and Commons, ratified and confirmed.

XLI.

SUMMARY of EVIDENCE upon the CASE.

EVERY Child shall be his Father's Heir, and all ancient Laws confirmed. *Magna Charta, in singulis suis Articulis Teneatur tam in hiis quæ ad Regem pertinent, quàm ad Alios*: "No lawful free-born Subject can be disinherited of his Birth-right or Inheritance, nor imprisoned nor condemned without Trial."

Charta Will. I. Conquerador unto the Statut. Marber. Reg. Hen. III. 9. Ibid.

YOUNGER Sons do inherit by Descent upon an Intestate's Lands, in Coparcenary, Joint Tenancy, or Tenancy in common.

14. Ibid. and by Stat. West. and also by 31 Hen. VIII.

34 Edw. I. Stat.
4. Cap. 6.

ALL Men shall have their Laws and Liberties, and free Customs, as they used to have when at any Time they had them best.

13 Edw. I. Cap.
2. Stat. West.

SETTLES the Formedon, which constitutes an Heir at Law, either by Will or other Settlement, according to the Mind of the Ancestor; *i. e.* the Lawgiver, in respect to his own Freehold. *Secundum Mentem Legislatoris.*

5 Edw. III.
Cap. 9.

No Man shall have his Lands or Inheritance seized, contrary to Law.

42. Ibid. Cap. 3.

No Man shall be ousted of his Freehold Inheritance, but by Law.

24 Edw. I.
Cap. 6.

If any Statutes have been made, or Customs brought in contrary to the Liberties granted in *Magna Charta*, such Statutes and Customs shall be void.

Magna Charta.

No Distinction made between Goods, real or personal, nor any Title or Privilege annexed to one Child's Succession more than the others, unless so ordained by the Form of the Gift, or Donation of the Ancestor, according to *Stat. West. 13 Edw. I.*

42 Car. II. Cap.
24.

ALL Lands, Manors, Houses, &c. are freed from all and every the Fruits, Consequences, and Effects of Feudal Tenures, and restored to common and free Soccage, and thus to be construed and adjudged for ever.

22 and 23 Car.
II. Cap. 10.

*Bona omnium
Generum.
Ibid. Stat.*

AFTER all just Debts are discharged and paid, the Surplusage or Residuum of an Intestate's Estate, without Distinction (Lands as well as Personals) to go One-third to the Widow (*nisi dotata fuerit*) and the Remainder among his Children in equal Shares; and the Heir at Law (named such by Formedon, Settlement, or Intail, as by *Stat. Westm. supra dicta*) to have an equal Share with the other Children; unless he had such full Share advanced to him during the Intestate's Life-time.

THIS

THIS is now construed Personal Estate only, whereas Dower is assigned on Lands, 9 *Hen. III.*

CHILDREN dying unmarried, after the Death of their Father, every Brother and Sister, or their Representatives, shall have equal Shares.

17 *Jac. II. Cap. 16.*

DECLARES, *inter alia*, that the suspending of Laws; or the Execution of Laws, without Consent of Parliament, is illegal.

1 *Will. and M. Stat. 2. Cap. 2.*

THAT it is the Right of the Subject to petition for Redress of Grievances, and that they do claim, demand, and insist upon all and singular the Premises, as their undoubted Rights and Privileges.

Ibid. Stat.

WHEREAS the Laws of *England* are the Birthright of the People thereof: Be it enacted, That all the Laws and Statutes of this Kingdom, for securing the Rights and Liberties, are, by his Majesty, with the Advice and Consent of the Lords Spiritual and Temporal and Commons, in Parliament assembled, ratified and confirmed.

12 and 13 *Will. and Mary, Cap. 2. Sect. 2.*

WHERE Coparceners or Joint Tenants (by Descent or by Formedon, as explained in 32 *Hen. VIII. Partit. 3. De Partitione faciendâ*) are seized of an Advowson, to present by Turns, each of them shall be seized of his separate Estate, 14 *Geo. II. Estates pur autre Vie* shall be divided as those of Intestates Personals.

7 *Ann. Cap. 18.*

COMMENTS and OPINIONS.

THAT *Magna Charta* is the Basis and Foundation of our Statute Law. That *Magna Charta* cannot be infringed or oppugned by any subsequent Statute, much less by any Custom, Title, Privilege, or Prescription.

Coke upon Littleton, fol. 115.

THAT the King, Lords, and Commons, are bound by the Coronation Oath, and Sacramental Test, to preserve the Laws, Liberties,

*Ibid. 381.
Ibid. 2 part, fol. 235.
Ibid. fol. 261.*

ties, and undoubted Rights of the Subject for themselves, and their Heirs for ever; and preserve equal Laws to all Men. *Magna Charta*. That Justice be done to the Poor as well as the Rich, *Statim et sine Difficultate vel Dilatione*.

WHEREFORE, in Consequence of, and by Virtue and Force of the sacred Obligation under which this Nation is (by the aforesaid Oaths, Imprecations, and Adjurations) most firmly bound, the Appellant, on the Case hereunto annexed, doth summon all Magistrates, Parents, and Guardians, of what Degree soever they be, (*quia, Causam agit, Tam Patriæ, quam Sibi*) to stand by, and by all lawful, dutiful, and respectful Means, to assist, by their Influence and Approbation, towards obtaining a full, clear, and conclusive Judgment, against the aforesaid pretended Canon of Inheritance, and just Relief in the Premises, as they shall answer the contrary at the Judgment-Seat of Christ!

COROLLARY and CONCLUSION.

THUS have we gone through Pleadings, which fully disculpate our admirable System of Laws, of disinheriting and discharging, from the best Security of their Allegiance, so many Thousands of his Majesty's Liege Subjects: Yet while the present pretended Canon (trumped up by former Lawyers) continues to preclude all Access to Courts of Law, what is left to the Appellant on the Case here annexed, but publicly to bring his Action in Manner and Form following, as in a feigned Case to obtain a general Issue?

*Writ of quæram
pro Rege quam
sibi, &c.*

Declaration.

“ THAT he the said Appellant, *qui tam pro Rege quam sibi*, complains, that the said Canon, and its Abettors, have by Force and Arms, and without Judgment before had or obtained, within thirty Years now last past, deforced him the said Appellant, from all and every Part of Ten Thousand Acres of Land, which he claims as his just and undoubted Right and lawful Inheritance, into which the said Canon and its Abettors had no Entry, unless after the said Disseisin; whereby, and other Enormities to him did,

“ he

“ he the said Appellant has suffered Loss and Damage, to the full
 “ Value of One Hundred Thousand Pounds, of lawful Money of
 “ *Great-Britain*, in Breach of the Peace of our Sovereign Lord the
 “ King, &c. For the due Proof whereof, and for prosecuting his
 “ Claim as aforesaid, the said Appellant will appear (*in propria*
 “ *Persona sua*) in any of his Majesty’s Courts of Law, and enter
 “ into Recognizances with two Securities, to abide the Issue.
 “ Whereupon he the said Appellant doth hereby pray a Writ of
 “ *Venire Facias* of our said Sovereign Lord the King; and for the
 “ due Recovery of his said Inheritance and Damages as aforesaid,
 “ puts himself on his Country, according to the Form of the Statute
 “ in such Cases made and provided, *Teste supra dicta*, &c. God Save
 “ the King.”

*Proferre in
Curia.*

THIS Canon, by its usurped Authority, has long oppugned every Act of Parliament made for securing the Liberty and Property of his Majesty’s Subjects, and been a Reproach with all Nations in return for our boasted equal Laws. To the great Council then it behoves every City, Town, and Borough in *England*, to recommend, by their Representatives, this Cause; but more particularly the illustrious Corporation of this Metropolis, (which, to its eternal Honour, first obtained the Protection of the Orphans from *William I. Anno 1070*, by Charter) were it only for the Sake of preserving at least Six-score Thousand Infants, in their just Rights and Privileges, who at this Day cannot “ discern their
 “ Right-hands from their Left.”

*Jonah 11 and
14.*

FINALLY, to prevent all quaint Evasions, sophistical Arguments, or self-interested Pleas, which may be urged in barr of a public Enquiry into the Subject Matter herein treated of, the Case hath been respectfully and dutifully presented to many noble Lords, and others of his Majesty’s Most Honourable Privy Council, and to above 200 Members of the Honourable House of Commons, besides a general Publication thereof during last Sessions of Parliament, in order to submit it to the Sense of all our Fellow-Subjects, together
 with

*Est per Legem
Terra, Mag.
Char.*

*Nat per Indiam;
Parcium fuer.
Mag. Char.*

** An Annual
solemn Meet-
ing from all
Parts of Europe
and America.*

*i. e. Anglicæ.
Force of true
Wisdom and
Knowledge.*

with the Arguments thereon in Point of Law. And it hath been so fortunate, not only to escape the least Censure on its general Animadversion, but hath met with full Approbation from a numerous List of Gentlemen, eminently distinguished in the Law, who with Integrity and noble Candour wish for its Success, as a Measure long hoped for and sought after by many learned Writers and Patriots heretofore.—But that the Pleader might be still further assured and convinced of the Rectitude of his Endeavours, to procure National Redress upon so unprecedented a Violation of every Divine and Human Law, (as that of a free Subject of *England*, his being disinherited without a Hearing, without Crime alledged, and without Judgment) he advised his Client to refer his Case to the Consideration of a numerous and most respectable Society of wise, sober, grave, and conscientious Men; who, without any Illustration than what the Words do now imply, gave (after mature Deliberation, in solemn Assembly met *, for the Discussion of such Causes, both in Law and Equity) an unanimous Assent thereto, accompanied with their sincere Wishes for the Success of his Cause; of all which due Evidence is ready to be produced.

A DECISION thus decreed, without Fee or Reward, Knowledge of the Parties, or the least interested Motive among the Judges, can arise from no other Source, than that Fountain of Justice and conscientious Impulse which guided the *Hebrews* under the Appellation of *Urim* and *Thummim*, the *Rhetra* or Oracular Decrees of the *Greeks*, the *Sybils* of the *Romans*, the *Druids* of the *Britons*, the *Wittenagemut* of the *Saxons*, and which now exists in the Parliament of *Great-Britain*. A Verdict so recorded will be considered as a Truth from whence the Injured will never recede, but through the Force and Virtue of the Statute of *Magna Charta*, solemnly demand *Oyer and Terminer* upon, from both Prince and People.

F I N I S.



